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OF THE

FREE CONSTITUTIONALISTS

TO

THE PEOPLE OF THE UNITED STATES.

BOSTON:

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A FEW friends of freedom, who believe the Constitution of the United States to be a sufficient warrant for giving liberty to all the people of the United States, make the following appeal against any support being given to the Republican Party at the ensuing election.

BOSTON, September, 1860.

NOTE TO SECOND EDITION.

ALTHOUGH this address was published previous to the late presidential election, and was designed to have an effect upon it, it nevertheless contains constitutional opinions, which are deemed of permanent importance, and worthy of preservation. The opinions it expresses in regard to the Republican party will also be pertinent so long as that party shall occupy the grounds it has hitherto done.

BOSTON, November, 1860.

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ADDRESS.

I.

THE real question, that is now convulsing the nation, is not — as the Republican party would have us believe — whether slaves shall be carried from the States into the Territories? but whether anywhere, within the limits of the Union, one man shall be the property of another?

Whether a man, who is confessedly to be held as property, shall be so held in one place, rather than in another? in a State, rather than in a Territory? is a frivolous and impertinent question, in which the man himself can have no interest, and which is unworthy of a moment's consideration at this time, if not at all times. If he is to be a slave at all, the locality in which he is to be held, is a matter of no importance to him, and of little or no importance to the nation at large, or any of its people.

If there are to be slaves in the country, a humane man, instead of feeling himself degraded by their presence, would desire to have them in his neighborhood, that he might give them his sympathy, and if possible ameliorate their condition. And the man, who, like the Republican party, consents to the existence of slavery, so long as the slaves are but kept out of his sight, is at heart a tyrant and a brute. And if, at the same time, like the more conspicuous members of that party, he makes loud professions of devotion to liberty and humanity, he thereby just as loudly proclaims himself a hypocrite. And those Republican politicians, who, instead of insisting upon the liberation of the slaves, maintain, under the name of *State Rights*, the inviola-

bility of the slaveholder's right of property in his slaves, in the States, and yet claim to be friends of liberty, because they cry, "*Keep the slaves where they are;*" "*No removal of them into the Territories;*" "*Bring them not into our neighborhood,*"— are either smitten with stupidity, as with a disease, or, what is more probable, are nothing else than selfish, cowardly, hypocritical, and unprincipled men, who, for the sake of gaining or retaining power, are simply making a useless noise about nothing, with the purpose of diverting men's minds from the true issue, and of thus postponing the inevitable contest, which every honest and brave man ought to be ready and eager to meet at once.

II.

We repeat, that the true issue before the country — the one which sooner or later must be met — is nothing less than this: Shall any portion of the people of the United States be held as property at all?

So far as the practical solution of this question depends upon existing political institutions, it depends mainly upon the constitution of the United States.

If the constitution of the United States — "the supreme law of the land" — declares A to be a citizen of the United States (we use the term *citizen* in its technical sense) then, constitutionally speaking, he is a citizen of the United States everywhere throughout the United States, — "any thing in the constitution or laws of any State to the contrary notwithstanding;" and no State law or constitution can depose him from that *status*, or deprive him of the enjoyment of the least of those rights, which the national constitution guarantees to the citizens of the United States.

If, on the other hand, that same "supreme law" declares him to be property, then, constitutionally speaking, he is property everywhere under that law; and his owner may, by virtue of that law, carry him, as property, into any and every State in the Union, and there hold him as a slave forever,—"any thing in the constitutions or laws of such States to the contrary notwithstanding."

There can, therefore, be no such distinction made between the States, as that of free and slave States. All are alike free, or all are alike slave, States. They must all necessarily be either the one or the other; since the constitution of the United States, being "the supreme law" over all alike, must necessarily determine, in all alike, the *status* of each individual therein, *relative to that "supreme law."* In other words, the constitution of the United States, and not any constitutions or laws of the States, must determine, in the case of each and every individual, whether he be a citizen of the United States, and entitled to the benefits and protection of the national government, or not. If it determines that any particular person is a citizen of the United States, entitled to the benefits and protection of the national government, then certainly he cannot be deprived of such citizenship, or of the protection and benefits which that citizenship implies, by any subordinate or State government; for, in that case, the constitution of the United States would not be "the supreme law of the land." If, on the contrary, the constitution of the United States determines that any particular individual (native or naturalized) is *not* a citizen of the United States, nor entitled to the benefits and protection of the national government, *it can do so only because it has itself declared him to be property; since that is the only cause that can prevent his being a citizen of the United States, and entitled, as such citizen, to the benefits and protection of the government of the United States.* The declaration of no subordinate law, that he is property, can break the force of that "supreme law," which declares everybody (native and naturalized) a citizen, whom it does not *itself* declare to be a slave.

The government of the United States cannot act directly upon the State governments, as governments, requiring them to do this, and forbidding them to do that. It must, therefore, act directly upon individuals; else it cannot act at all. It is practically a government only so far as it does operate upon individuals. It must necessarily know, by virtue of the United States constitution, the individuals upon whom it is to operate; otherwise it would be in the situation of a government not knowing its own citizens, and consequently not knowing to whom its own duties were due.

The rights, which the general government secures to the people, are as much *personal* rights, and come home to each separate individual as directly and fully as do the rights secured to them by the State governments. And the rights secured to the people by the national government, as much imply personal liberty, on the part of the people, as do the rights secured to them by the State governments; for, without personal liberty, the former rights can no more be enjoyed than the latter. Hence the indispensable necessity that the general government should know, *for itself, independently of the State governments*, who are, and who are not (if any are not) citizens of the United States; for otherwise, we repeat, it cannot know to whom its own duties are due.

To say that it rests with the State governments to decide upon whom the United States government shall act, or upon whom it shall confer its protection or benefits, is equivalent to saying that "the supreme law" is dependent upon the arbitrary will of subordinate laws, for permission to operate at all as a law. It is consequently equivalent to saying that the subordinate law may nullify the supreme law, and exclude it from a State altogether, by simply declaring that no persons whatever, within the State, shall be citizens of the United States; and consequently that there shall be no persons, within the State, upon whom the supreme law can operate, or upon whom it shall confer its benefits.

We repeat the proposition, that, if the State constitutions or laws can determine who may, and who may not, be citizens of the United States, and enjoy the benefits of the United States government, each State may nullify the constitution, government, and laws of the United States, within such State, by declaring that there shall be, within the State, no citizens of the United States, to enjoy those benefits, or upon whom the laws of the United States shall operate.

It is, therefore, indispensable to the existence and operation of the government of the United States, that the constitution of the United States shall *itself* determine upon whom the United States government shall operate, and who are its citizens, "any

thing in the constitutions or laws of the States to the contrary notwithstanding;" and that the State laws and constitutions shall be allowed to have nothing to do with the matter.

To say that a State can make a man a slave, is only another mode of saying that a State can deprive the United States of a citizen, and abolish the government of the United States, so far as that citizen is concerned. And to say that a State can deprive the United States of one citizen, is equivalent to saying that a State can deprive the government of the United States of all its citizens, within the State. And to say that a State can deprive the government of the United States of all its citizens, within the State, is equivalent to saying that the State can entirely abolish the United States government, within such State. This is the necessary conclusion of the doctrine, that the States can make a slave of any individual, who would otherwise be a citizen of the United States.

If all the people of the States were made slaves, plainly the United States government would have no citizens, upon whom it could operate; and it would, therefore, be virtually abolished. And, in just so far as the people of the United States are made slaves, in just so far is the United States government abolished.

This whole theory, therefore, that the States have a right to make slaves of the people of the United States, is nothing less than a theory that the States have the right to abolish the government of the United States, by withdrawing individuals from the operation of its laws.

To say, as is constantly done, that the United States constitution "*recognizes*," as slaves, those whom the States may declare to be slaves, is equivalent to charging the constitution with the absurdity of *recognizing* the right of the States to make slaves of the citizens of the United States. And to say that the constitution of the United States *recognizes* the right of the States to make slaves of the citizens of the United States, is equivalent to charging it with the absurdity of actually *recognizing* the right of each separate State to abolish the government of the United States, within such State.

It therefore results that the constitution of the United States,

"the supreme law of the land," must necessarily fix the *status* of every individual relatively to that law; and that, in fixing the *status* of each and every individual, relatively to that law — that is, in determining whether an individual shall be a citizen of the United States or not, — it necessarily fixes his *status* as a freeman, or a slave.

And it necessarily does this independently of, and in defiance of, any subordinate or State law; for otherwise it could not be "supreme."

To say that the national constitution is "the supreme law of the land," and yet that it depends upon each of thirty-three State governments to say upon whom that supreme law shall operate, or whom it shall protect, is as absurd as it would be to say that one man is an absolute monarch over thirty-three States, and yet that he is wholly dependent upon the consent of thirty-three subordinate princes, for permission to rule over his own subjects.

If the constitution, laws, and government of the United States are to be limited, in their operation within each State, to such individuals as the States respectively may designate, then each State may, so far as its own territory is concerned, determine who may, and who may not, send and receive letters by the United States mail; who may, and who may not, go into a United States custom-house for purposes of commerce; who may, and who may not, go into a United States court-house; and so on. If this were the true relation between our general and State governments, then the United States constitution, instead of declaring that "this constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding," ought to have declared that this constitution, and the laws and treaties made by the United States in pursuance thereof, shall have effect, within each State, only so far as such State shall consent, or only upon such individuals as such State shall designate.

III.

Another proof that the general government must determine for itself, independently of the State governments, who are, and who are not, citizens of the United States, is found in that provision of the constitution, which declares that "the United States shall guarantee to every State of this Union a republican form of government."

Although the constitution presumes that the State governments will be *representative* governments, yet this provision for "a *republican* form of government" certainly requires that the United States shall guarantee to the States something more than a mere *representative* government; for a government may be a representative government, and yet the constituent body — or the body enjoying the right of suffrage — be so small, and the principles of the government so exclusive and arbitrary, as to make the government a perfect tyranny, as to the great body of the people. A guaranty, therefore, of a *representative* government simply, would have been of no practical value to the people.

It is plain, too, from another part of the constitution, that the constitution does not mean to imply that a *representative* form of government is necessarily a *republican* form of government; because if it did, it would have made some specific provision as to the extent of the suffrage to be enjoyed by the constituent body. Whereas it leaves that matter to be regulated at the discretion of the States respectively.*

It is certain, therefore, that the "republican form of government," which the United States are bound to guarantee to the States, is something essentially different from, and more than, a representative government, representing such portions only of the whole people as may chance to get the power of a State into their hands, wielding it arbitrarily for their own purposes.

What, then, is implied in this "republican form of govern-

* "The House of Representatives shall be composed of members, chosen every second year by the people of the several States; and the electors in each State shall have the requisite qualifications for electors of the most numerous branch of the State legislature."—*Art. I., sec.* 2.

ment?" *This certainly, if no more, is implied* — for this must necessarily be implied in the very terms, "a republican form of government," — viz., *that at least all the members of the republic shall enjoy the protection of the laws.*

Whatever other disagreements there may be in men's minds, as to the essential requisites of "a republican form of government," certainly no man in his senses can deny so self-evident a proposition as this, — that such a government necessarily implies that all the *acknowledged members of the republic* must be under the protection of the laws.

This being admitted, it follows that the United States must guarantee to each State a government, that shall give the protection of the laws to all *the acknowledged members or citizens of the State.*

But who are the *acknowledged* members or citizens of a State? We answer, that, whomsoever else they may, or may not, include, they must certainly include *all the citizens of the United States, within the State.* This must necessarily be so; because it would be absurd to suppose that those people, in the various States, who united to form the national government, *and thereby made themselves citizens of the United States,* would also unite to guarantee a republican form of government for each of the separate States, *unless they themselves were personally to have the benefit of this guaranty.* It certainly cannot be supposed that they would be so foolish and suicidal as to unite to guarantee to others a government within the States, the benefits of which could be denied to themselves, or the power of which could be turned against themselves for purposes of oppression.

This guaranty, then, on the part of the United States, of a "republican form of government" for each State, is a guaranty of a government, *under which at least all the citizens of the United States, within the State, shall have the protection of the laws.*

From this proposition it follows inevitably that the United States government must determine, independently of the State government, *who are the citizens of the United States, within a State;* for, otherwise, it could not know when it had fulfilled this guaranty to them of the protection of a republican form of go

vernment. The guaranty itself might be wholly or partially defeated, at the pleasure of the State government, if it were left to the State government itself to determine who were, and who were not, among those *citizens of the United States, within the State*, for whose benefit this guaranty had been made. And the State government might very likely have great motive to defeat the guaranty, either in whole or in part.

It must be borne in mind that this guaranty of a republican form of government *to the citizens of the United States, within a State*, is a guaranty against the oppressions of any anti-republican form of government, that may succeed in obtaining power in a State. Yet clearly the United States could not protect its own citizens against such anti-republican government within the States, unless it could determine, independently of the State governments, who its own citizens, within the States, were.

We insist that this argument is entirely conclusive to prove that the United States Government must determine, for itself, who are its own citizens within the respective States; and that the constitutions and laws of the States themselves can have nothing whatever to do with the matter.

IV.

Still further proof that the constitution of the United States, and not the constitution or laws of the States, controls the citizenship of every person born in the country, is found in the fact that a simple act of congress is acknowledged by all to be sufficient, in defiance of all State laws and constitutions, to confer the privilege of United States citizenship upon persons of foreign birth. It would certainly be very absurd to give to congress such a power in regard to foreigners, if neither the United States constitution, nor the United States government had any similar power in regard to the natives of the country; for, in that case, the constitution would do more for foreigners than for natives.

V.

We therefore hold it demonstrable, at least, if not self-evident, that the constitution of the United States, "the supreme

law of the land," must, *simply by virtue of its supremacy*, fix the *status* of every individual in the United States, independently of the State governments; that it must operate directly upon each and every individual, native or naturalized, declaring him entitled, as a citizen of the United States, to the protection and benefits of the national government, or declaring him to be property, subject only to the will of his owner, and therefore entitled to no personal protection at all, either from the general or State governments.

VI.

If it rests with the State governments to say whether the *natives* of the country shall be citizens of the United States, and have the protection of the national government, or be property, subject only to the will of their owners, then certainly it rests equally with the State governments to say whether *naturalized* persons shall be citizens or slaves; for naturalization by the United States government can at most but put the persons naturalized on a level with the natives. And that is all that the principle of naturalization implies.

This question therefore, as to the power of the States to convert men into property, is not one that concerns the natives of the country alone. It concerns all immigrants as well; since the general government can certainly have no more power to protect immigrants against being reduced to property ,than it has to protect those born on the soil.

VII.

There are, then, three decisive proofs that the United States government must determine for itself, independently of the State governments, who are, and who are not (if any are not) citizens of the United States.

The first of these proofs is, that otherwise the United States government could not know its own citizens, or consequently know to whom its own proper and ordinary duties were due.

The second proof is, that otherwise the United States government could not know when it had fulfilled its guaranty of "a republican form of government" to the citizens of the United States, within the States respectively.

The third proof is, that otherwise the United States constitution and laws could either do more for foreigners (by naturalization) than they can do for those born on the soil; or else naturalization itself, by the United States government, would be an utterly useless process for protecting the persons naturalized against being reduced to property by the State government.

VIII.

Assuming it now to be settled, that the constitution of the United States fixes the *status* of every person, as a citizen or a slave; and that it does so, "any thing in the constitution or laws of any State to the contrary notwithstanding;" let us ascertain what its decision on this point is. To do so, we have only to ascertain by and for whom the constitution of the United States was established. This the instrument itself has explicitly informed us. It declares itself to have been established by "the people of the United States," for the benefit of "themselves and their posterity." From this declaration of the constitution itself there can be no appeal. And the instrument is to be interpreted throughout consistently with this declaration. Thus interpreted, it implies that *all* the then "people of the United States," with their "posterity," were to be citizens of the United States, and, as such, to have the benefit and protection of the general government; and consequently that none of them could be lawfully reduced to the condition of property. It also authorizes congress to naturalize all persons of foreign birth, coming into the country, without discriminating between those that may come in voluntarily, and those that may be brought in against their will. It also authorizes Congress "to punish offences against the law of nations;" and thus authorizes the punishment of all attempts to enslave the people of other nations, whether they come here voluntarily, or are brought here

by force. It also, without making any discrimination as to persons, authorizes the writ of *habeas corpus*, which denies the right of property in man. It also requires the United States to "guarantee to every State in the Union a republican form of government;" under which at least all the citizens of the United States, within the State, shall have the protection of the laws. In these various ways, the constitution of the United States, "the supreme law of the land," has made the principle of property in man impossible anywhere within the United States; and has empowered the general government to maintain that principle, in opposition to any subordinate or State government.

We are aware that the supreme court of the United States, in the Dred Scott case, have asserted that the phrase, "the people of the United States," did not mean *all* the people, but only all the *white* people, of the United States. And they attempt to fortify this opinion by saying that the Declaration of Independence itself did not mean to assert that "*all* men were created equal," but only that all *white* men were created equal. To this view of the case we will, at this time, offer no other answer than this: that, if this famous clause of the Declaration of Independence is to be interpreted according to this opinion of the supreme court, the whole instrument must also be interpreted in accordance with it; and the necessary consequence would then be, that the Declaration of Independence absolved only the *white* people of the country from their allegiance to the English crown, leaving the black people still subject to that allegiance, and entitled to corresponding protection. Thus Queen Victoria would have now, in our midst, four millions of subjects, whose rights she ought at once to take care of, as she would undoubtedly be very willing to do.

We are also aware, that, although "the idea that there could be property in man" was studiously excluded from the constitution itself, it is nevertheless historically known that an understanding existed, *outside of the constitution*, among some of the framers, and other politicians of that day, that, if the honest character of the instrument itself should be successful in securing its adoption by the people, these framers and others would then use

their influence to give to the instrument an interpretation favorable to the maintenance of slavery. And we are aware that it is now claimed that this outside understanding ought to be substituted, as it hitherto has been, for the instrument itself, and acknowledged as the real constitution, so far as slavery is concerned.

Our answer on this point is, — that this outside understanding could have existed among but a small portion of the whole people; that they dared not incorporate it in the constitution itself; that, instead of being any part of the constitution itself, it was but a traitorous conspiracy against the very constitution, which they, with others, induced the people of the United States to adopt; that it could have had no legal effect or validity, even among those who were actually parties to it; and that we, of this day, would not only be slaves, but idiots, if we were to allow the criminal purposes of these men to be substituted for the constitution; and thus suffer ourselves, in effect, to be governed by a set of dead traitors and tyrants, who no longer have any rights in this world; who, when living, dared put only honest purposes into the constitution; and who, if now living, would deserve to be punished for their treason and their crimes, rather than reverenced as patriots and statesmen, and taken as authority as to the true meaning of the constitution.

The fraudulent interpretation given to the constitution at large, in respect to slavery, has been accomplished mainly by means of the fraudulent interpretation given to the one word "free," in the clause relative to representation and direct taxation. The conspirators against freedom, with their dupes, have, from the foundation of the government, claimed that this word was used to describe a free person, *as distinguished from a slave.* Whereas it had been used in England for centuries, and in this country from its first settlement, to describe a native or naturalized person, *as distinguished from an alien.* Thus our colonial charters guaranteed that persons born in the colonies should "be *free* and natural subjects, as if born in the realm of England." When the troubles arose between this and the mother country, in regard to taxation, our fathers insisted that they were "*free*

British subjects," and *therefore* could not be taxed without their consent. And, up to the Revolution, the words *free* and *freemen*, if not the only words used, were the words principally used, to designate native or naturalized persons, as distinguished from aliens.

After the Revolution, the word "*free*" continued to be used in this political sense, through the country generally. And, at the time the constitution of the United States was adopted, it was so used in the constitution of Georgia, Art. XI.; in the general naturalization law of Georgia, passed Feb. 7, 1785, Sec. 2; in a statute of Georgia, passed Feb. 22, 1785, granting lands to the Count D'Estaing, and making him "a *free* citizen" of the State; in the constitution of South Carolina, Sec. 13; in a statute of South Carolina, passed March 27, 1787, naturalizing Hugh Alexander Nixon; in the constitution of North Carolina, Sec. 40; in the constitution of Pennsylvania, Sec. 42; in numerous acts of the legislature of Massachusetts, from the year 1784 to 1789, naturalizing the individuals named in them; in the charters of Rhode Island and Connecticut, then continued in force as constitutions; in the Articles of Confederation, Art. IV., Sec. 1; and in the Ordinance of 1787. The statutes and constitutions of several of the States used the words *freeman* and *freemen* in a nearly similar, if not in precisely the same, sense.

Usage, therefore, — even the usage of the then strongest slaveholding States themselves — and all legal rules of interpretation applicable to the case — and especially that controlling rule, which requires a meaning favorable to justice, rather than injustice, to be given to the words of all legal instruments whatsoever — required that the word "*free*," in the constitutional provision relative to representation and direct taxation, should be understood in this political sense, to distinguish the native and naturalized inhabitants of the country from aliens, and not to distinguish free persons from slaves.

But slavery, which can be maintained only by force and fraud, has hitherto succeeded in palming off upon the country a false interpretation of the word "*free*." And it is only by giving a

fraudulent meaning to the word "free," that men have been made to believe that the constitution recognized the legality of slavery. Without the aid of this fraud, the other clauses, now held to refer to slaves, could probably never have had such a meaning fastened upon them; since there is nothing in their language that justifies such a meaning.

If we wish to enjoy any liberty ourselves, or do any thing for the liberation of others, it is time for us to emancipate ourselves from our intellectual and moral bondage to the frauds and crimes of dead slaveholders and their accomplices, and either read and execute our constitution as it is, or tear it in pieces. If the language of our constitution is not to be considered as conveying its true meaning, nor interpreted by the same rules by which all our other legal instruments are interpreted; if it is to be presumed, as it ever heretofore has been, that neither honest men, nor honest motives could have had any part in the formation or adoption of the constitution; but we are to search, outside of the instrument, for the private motives of every robber, kidnapper, hypocrite, scoundrel, and tyrant, who lived at the time it was adopted, and accept those motives, in place of those written in the instrument itself, as the only lawful principles of the government, — if such is the true mode of ascertaining the legal import of written constitutions, the sooner they are all given to the flames, the better it will be for the liberties of mankind, and the better we shall vindicate our own claims to the possession of common honesty and common sense. If we dare not correct the frauds of the past, and interpret our constitution by the same rules by which it ought to have been interpreted from the first, — if, in other words, we dare not decide for ourselves what the true principles of our constitution are, and whether those principles have been obeyed or violated by those appointed to administer it — we are ourselves wretched cowards and slaves, fit to be used as instruments for enslaving each other.

But, independently of the constitution of the United States, we know that slavery has never had any constitutional existence in this country, for these reasons: —

1. The colonial charters, *the constitutional law of the colonies*,

required the legislation of the colonies to "be consonant to reason, and conformable, as nearly as circumstances would allow, to the laws, customs, and rights of the realm of England." This made slavery illegal up to the time of the Revolution.

2. Of all the State constitutions established and existing in 1787 or 1789, when the constitution of the United States was framed and adopted, not one established or authorized slavery. It was, therefore, impossible that the slavery then existing could have been legal.

3. Even of the statute law of the States, on the subject of slavery, in 1787 and 1789 (admitting such statute law to be, as it really was not, constitutional), none described the persons to be enslaved with such accuracy as that many, if indeed any, individuals could ever have been identified by it as slaves.

On the 19th of August, 1850, Senator Mason, of Virginia, confessed, in the Senate of the United States, that, so far as he knew, slavery had never been established by positive law in a single State in the Union. And in the United States House of Representatives, on the 14th day of March last, Mr. Curry, of Alabama, said, —

"No law, I believe, is found on our statute books authorizing the introduction of slavery; and, if positive precept is essential to the valid existence of slavery, the tenure by which our slaves are held is illegal and uncertain."

He also, in the same speech, said, —

"It has been frequently stated in congress, that slavery was not introduced into a single British colony by authority of law; and that there is not a statute in any slaveholding State legalizing African slavery, or 'constituting the original basis and foundation of title to slave property.'"

And he made no denial of the truth of this statement.

Thus we have abundant evidence that slavery had never had any legal existence in the country, up to the adoption of the constitution of the United States. And, if it had no legal existence at the time of the adoption of the United States constitution, that constitution necessarily made citizens of all the then people of the United States; for there can be no question that it made citizens of all, unless of such as were then *legally* held in bondage.

But, even if the constitutions and statute-books of every State had legalized slavery in the most unequivocal manner, the constitution of the United States would nevertheless have given freedom to all; because it made "the people of the United States," without discrimination, citizens of the United States; and was thenceforth to be "the supreme law of the land," "any thing" *then existing in*, as well as ever afterwards to be incorporated into, "the constitution or laws of any State to the contrary notwithstanding."

The adoption of a new constitution is a revolution; and the object of revolutions is to get rid of, and not to perpetuate, old abuses and wrongs. All new constitutions, therefore, should be construed as favorably as possible for the accomplishment of that end. For this reason, in construing the constitution of the United States, no notice can be taken of (with the view of perpetuating) any abuses or crimes tolerated, or even authorized, by the then existing State governments.

What excuse, then, has any one for saying, that, constitutionally speaking, our country is not a free one? free for the whole human race? and especially for all born on the soil?

IX.

The palpable truth is, that the four millions of human beings now held in bondage in this country are, in the view of the constitution of the United States, full citizens of the United States, entitled, without any qualification, abatement, or discrimination whatever, to all the rights, privileges, and protection which that constitution guarantees to the white citizens of the United States, and that their citizenship has been withheld from them only by ignorance, and fraud, and force.

Such being the truth in regard to this portion of the citizens of the United States, it is the constitutional duty of both the general and State governments to protect them in their personal liberty, and in all the other rights which those governments secure to the other citizens of the United States.

It is as much the constitutional duty of the general govern-

ment, as of the State governments, to protect the citizens of the United States in their personal liberty; for if it cannot secure to them their personal liberty, it can secure to them no other of the rights or privileges which it is bound to secure to them.

To enable the general government to secure to the people their personal liberty, it is supplied with all necessary powers. It is authorized to use the writ of *habeas corpus*, which of itself is sufficient to set at liberty all persons illegally restrained. It is authorized to arm and discipline the people as militia, and thus enable them to do something towards defending their own liberty. It is authorized "to make all laws which shall be necessary and proper for carrying into execution" the powers specifically enumerated. That is to say, it is authorized "to make all laws which shall be necessary and proper for carrying" home to each individual every right and every privilege which the constitution designs to secure to him; and the United States courts are required to take cognizance "of all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." In other words, they are authorized to take cognizance of all cases in which the question to be tried is the right which any individual has under the constitution, laws, or treaties of the United States. The United States are also bound to guarantee to all the citizens of the United States, within the States, the benefits of a republican form of government. There is, then, obviously no lack of powers delegated to the general government, to secure the personal liberty of all its citizens.

That it is as much the duty of the general, as of the State, governments to secure the personal liberty of the people of the United States, will be obvious from the following considerations: —

The people of the United States live under, and are citizens of, two governments, the general and the State governments. These two governments are mainly independent of each other; having, for the most part, distinct powers, distinct spheres of action, and owing distinct duties to the citizen. The purpose of the general

government is to secure to the individual the enjoyment of a certain enumerated class of rights and privileges; and the object of the State governments is to secure him in the enjoyment of certain other rights and privileges. But both governments have at least one duty in common, viz., that of securing personal liberty to the citizen. This must necessarily be a duty common to both governments, because the enjoyment of each of the classes of rights and privileges before mentioned, to wit, those that are to be secured by the general government, and those that are to be secured by the State governments, necessarily imply the possession of personal liberty on his part; since without this liberty, none of the other rights or privileges to be secured to him by either government, can be enjoyed. It is necessary, therefore, that each government should have the right to secure his liberty to him, else it cannot secure to him the other rights and privileges which it is bound to secure to him. It is as necessary that the general government should have power to secure to him personal liberty, in order that he may enjoy all the other rights and privileges which the general government is bound to secure to him, as it is that the State governments should have power to secure his personal liberty, in order that he may enjoy all the other rights and privileges which it is the duty of the State governments to secure to him. It would be absurd to say that the general government is bound to secure to him certain rights and privileges, which implied the possession of personal liberty on his part, as an indispensable pre-requisite to his enjoyment of them, and yet that it had no power of its own to secure his liberty; for that would be equivalent to saying that the general government could not perform its own duties to the citizen, unless the State governments should have first placed him in a condition to have those duties performed, — a thing which the State governments might neglect or refuse to do.

The State governments have evidently no more right to interfere to prevent the citizen's enjoyment of the rights and privileges intended to be secured to him by the general government, than the general government has to interfere to prevent his enjoyment of the rights and privileges intended to be secured

to him by the State governments. For example, the State governments have no more right to prevent his going into the post-offices, custom-houses, and court-houses, which the general government has provided for his benefit, than the general government has to prevent his travelling on the highways, or going into the schools, or court-houses, which the State governments have provided for his benefit.

This proposition seems to us so manifestly true as to need no elaboration. And yet, if either of these governments can reduce him to slavery, it can deprive him of all the rights and privileges which the other government is designed to secure to him. In other words, it can deprive that other government of a citizen, and thus abolish that other government itself, so far as that citizen is concerned. Certainly a State government has no more power to do this wrong towards the national government, than the national government has to do a similar wrong towards a State government. In short, neither government has any constitutional power to deprive the other of a citizen, by making him a slave.

Furthermore, each of these two governments has an equal right to defend their common citizens against being enslaved by the other. If, for example, the *general* government were to attempt to enslave its citizens within a State, the *State* government would clearly have the right to defend them against such enslavement; because they are its citizens as well as citizens of the United States. And, for the same reason, if a State government attempt to enslave its citizens within the United States, the general government clearly has the same right to resist such enslavement, that the State government would have in the other case; because they are citizens of the United States, as well as of the State.

This power of each government to resist the enslavement of their common citizens by the other, is clearly a power necessary for its self-preservation; a power that must, of necessity, belong to every government that has the power of maintaining its own existence. It must, therefore, as much belong to the general as to the State governments.

Still further: The principal, if not the sole object of our having two governments for the same citizen, would be entirely defeated, if each government had not an equal right to defend him against enslavement by the other. What is the grand object of having two governments over the same citizen? It is, that, if either government prove oppressive, he may fly for protection to the other. This right of flying from the oppression of one government to the protection of the other, makes it more difficult for him to be oppressed, than if he had no alternative but submission to a single government. This certainly is the only important, if not the only possible, advantage of our double system of government. Yet if either of these two governments can enslave their common citizen, and the other has no right to interfere for his protection, the principal, if not the only, benefit of our having two governments, is lost.

But our governments, instead of regarding this great and primary motive for their separate existence, have hitherto ignored it, and acted upon the theory, that it is the duty of each to go to the assistance of the other, when the latter finds its own strength inadequate to the accomplishment of its tyrannical purposes. This we see in the case of fugitive slaves. When a citizen of the United States, reduced to slavery by a State government, or by a private individual with the consent and co-operation of the State government, makes his escape beyond the jurisdiction and power of the State government, the United States government pursues him, recaptures him, and restores him to his tyrants. Thus the citizen, instead of finding his security in the double system of government under which he lives, finds in it only a double power of oppression united against him. What grosser violation of all the rational and legitimate purposes of our double system of government can be conceived of than this?

If these views are correct, it is just as much the constitutional duty, and just as clearly the constitutional right, of the general government to protect the people of the United States against enslavement by the State governments, as it is the constitutional duty and right of the State governments, to protect the same people against enslavement by the general government.

The general government is as much set as a guard and a shield against enslavement by the State governments, as the latter are as guards and shields against enslavement by the former.

This view, too, of the object to be accomplished by our double system of government, — viz., the greater security of the citizen against the oppression of his government,— presents, more clearly perhaps than has before been done, the necessity that the general government should determine for itself, independently of the State governments, who are its own citizens, and who are entitled to its protection; for otherwise the general government could have power to protect against a State government only those whom the State government should consent to have thus protected against itself. It would be an absurdity to say that the general government was established to protect the people against the State governments, and yet that it is left to the State governments themselves to say whom the general government may thus protect. To allow the State governments the power to say whom the general government may, and whom it may not, protect against themselves (the State governments), would be depriving the general government of all power to protect any. It would be like allowing a man to protect, against a wolf, all lambs except those whom the wolf should choose to devour.

The conclusion necessarily is, that the general government must determine for itself, independently of the State governments, who are its citizens, and whom it will protect; and, if the general government makes this determination, it can, under the constitution of the United States, make no other determination than that *all* the native and naturalized inhabitants of the United States are its citizens, and entitled to its protection.

X.

There is still another point of great practical importance to be considered. It is this: If those now held in bondage in this country are, in the view of "the supreme law of the land," citizens of the United States, entitled to the full privileges of citizenship equally with all the other citizens of the United States,

then it is not only the constitutional right and duty of both the general and State governments to protect them in the enjoyment of all their rights as citizens, but it is also not merely a moral duty, *but a strictly legal and constitutional right*, of all the other citizens of the country to go, in their private capacity as individuals, to the rescue of those enslaved.

It is as much a legal right of one citizen to rescue another from the hands of a kidnapper, as to rescue him or her from a robber, ravisher, or assassin. And all the force necessary for the accomplishment of the object may be lawfully used.

When the government fails to protect the people against robbers, kidnappers, ravishers, and murderers, it is not only a legal right, but an imperative moral duty, of the people to take their mutual defence into their own hands. And the constitution recognizes this right, when it declares that "the right of the people to keep and bear arms shall not be infringed;" for "the right of the people to keep and bear arms" implies their right to use them when necessary for their protection.*

We claim it as a legal and constitutional right to travel in all parts of our common country, and to perform the common offices of humanity towards all whom we may find needing them. And if, in our travels, we chance to see a fellow-man in the hands of a kidnapper or slaveholder, we claim the right to rescue him, at any necessary cost to the kidnapper. And, if any part of our country be unsafe for single travellers, or small companies of travellers, we claim the right to go in companies numerous enough to make ourselves safe, and to enable us to rescue all whom we may find needing our assistance.

And it is the legal duty of both the United States and all

* If, instead of going to the rescue of a fellow-citizen, whom we see set upon by a robber, ravisher, kidnapper, or murderer, we connive at the crime, either by declaring the act legal, or encouraging the idea that it can be committed with impunity, we thereby make ourselves accomplices in the crime. By this rule, if the persons enslaved in this country are, in the view of the United States Constitution, citizens of the United States, equally with the other citizens of the United States, and we nevertheless connive at and encourage their enslavement, either by declaring it legal, or by holding out the hope that it can be done with impunity, we are, not merely in the view of the moral law, but in the view of the constitution of the United States, criminal accomplices in their enslavement.

State courts — judges and juries — to protect us in the exercise of these rights.

XI.

We call particular attention to the duties of juries in this matter. We believe in that noblest, and incomparably most valuable, of all the judicial opinions ever rendered by the Supreme Court of the United States, in which they declared, by the mouth of John Jay, the first, and great, and *honest* Chief-Justice, that even in civil suits (as well as criminal) juries have a right to judge of the law as well as the fact.*

We also believe with the United States House of Representatives, who, in 1804, by a vote of 73 yeas to 32 nays, resolved to impeach Samuel Chase, one of the Justices of the Supreme Court of the United States, for, as they said, "endeavoring [in the trial of John Fries for treason] to wrest from the jury their indisputable right to hear argument, *and determine upon the question of law*, as well as the question of fact, involved in the verdict, which they were required to give," and declared such conduct "irregular," and "as dangerous to our liberties as

* This being a case, in which a State was a party, it was tried by a jury in the Supreme Court of the United States. From the preliminary remarks of the Chief-Justice, it will be seen that the judges were unanimous in the opinion given. He said:

"It is fortunate on the present, as it must be on every occasion, to find the opinion of the court unanimous. We entertain no diversity of sentiment; and we have experienced no difficulty in uniting in the charge, which it is my province to deliver. . . . .

"It may not be amiss here, gentlemen, to remind you of the good old rule, that on questions of fact, it is province of the jury, on questions of law, it is the province of the court, to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law, as well as the fact, in controversy. On this, and on every other occasion, however, we have no doubt you will pay that respect which is due to the opinion of the court; for, as on the one hand, it is presumed that juries are the best judges of facts, it is, on the other hand, presumable that the court are the best judges of law. But still both objects are lawfully within your power of decision." (State of Georgia, *vs.* Brailsford; III. Dallas, Rep. 1.)

This was in the year 1794.

it is novel to our laws and usages;" and that on "the rights of juries [to determine the law, as well as the fact] ultimately rest the liberty and safety of the American people."

We believe more than this. We believe that jurors, under our constitution, not only have the right to judge what the laws are, and whether they are consistent with the constitution, but that they have all the ancient and common-law right of jurors to judge of the *justice* of all laws whatsoever, which they are called upon to assist in enforcing, and to hold all of them invalid which conflict with their own ideas of justice. And that they are under no legal or moral obligation to hold valid every iniquitous statute, which they may suppose the letter of the constitution can possibly be interpreted to cover. It is their duty, as it is the duty of congresses and judges, to strive to see how much justice, and not how much injustice, the constitution can be made to authorize.

We believe that juries, and not congresses and judges, are the palladium of our liberties. We do not at all admit, as is now almost universally assumed to be the fact, that the people of this nation have ever given their rights and liberties into the sole keeping of legislators and judges. We hold that the assumption of the supreme court of the United States to decide, authoritatively for the people of this country, what their rights and liberties are, and what is the true meaning of the constitution, is an assumption of absolute power — an entire and flagrant usurpation — authorized by no word or syllable of the constitution; and that it should not be submitted to for a moment, unless we all of us design to be slaves.

We believe, too, that the practice of selecting jurors by judges and marshals, the servile and corrupt instruments of the government, who will of course select only those known to be favorable to the tyrannical measures of the government, is as utterly unconstitutional, as it necessarily must be destructive of liberty. We believe that juries should be, in fact, what they are in theory, viz., a fair epitome or representation of "the country," or people at large; and that to make them so, they must be selected by lot, or otherwise, from the whole body of

male adults, without any choice or interference by the government, or any of its officers; and that when selected, no judge or other officer of the government can have any authority to question them as to whether they are in favor of, or opposed to, the laws that are to be put in issue.

In short, we believe it to be the purpose of our systems of government to maintain in force only those principles of justice which the people generally can understand, *and in which they are agreed;* and not to invest one portion of the people, either minority or majority, with unlimited power over the others.

Evidently the only tribunal known to our constitution, and to be relied on for the maintenance of such principles, is the jury.

We, therefore, hold that all legislative enactments and judicial opinions should be held subordinate to that general public conscience, which is presumed to be represented in the jury-box, by twelve men, taken indiscriminately from the whole people, and capable of giving judgments against persons or property only when they act with entire unanimity. And we believe it to be the primary and capital object of our constitutions thus "to get twelve honest men into a jury-box," to do justice, according to their own notions of it, between man and man, and to see that only such measures of government shall be enforced as they shall *all* deem just and proper.

We believe that, under this system of trial by jury, it will be safe for one human being to go to the rescue of another from the hands of kidnappers, ravishers, and slaveholders. We believe, also, that a government, so powerful and so tyrannical as to restrain men from the performance of these primary duties of humanity and justice, ought not to be suffered to exist.

XII.

Turning now from our constitution, as it is in theory, and looking at our government, as it is in practice, what do we find? Do we find our national government securing to all its citizens the rights which it is constitutionally bound to secure to them? No. It does not know, nor even profess to know, *for*

itself, who its own citizens are. It does not even profess to have any citizens, except such as the separate States may see fit to allow it to have. It dares not perform the first political duty towards the people of the United States *individually*, without first humbly asking the permission of the State governments. It ventures timidly, and hat in hand, within each State, as if fearful of being treated as an intruder, and obsequiously inquires if the State government will be pleased to allow "the supreme law of the land" the privilege of having a few citizens within the State, to save it from falling into contempt, and becoming a dead letter? Shamefacedly confessing its own barrenness, it simply offers itself as a dry nurse to any political children whom the States may see fit to commit partially to its care. Some of the States, confiding in its subserviency and desire to please, graciously suffer the forlorn and harmless creature to busy itself in various subordinate services, such as carrying letters, &c., for *all* their citizens. Others, less gracious towards it, or less disposed to allow their citizens the luxury of such a servant, give it strict orders to do nothing for these, those, and the others of their people — the exceptions amounting, in some States, to one-half of the whole population. And the submissive creature follows these instructions to the letter, living, as it does, in perpetual fear lest the slightest transgression, on its part, should be followed by its summary dismissal from the political household. The only dignity left it is its name. It still calls itself the United States Government; fancies it has citizens of its own, whom it protects; plumes itself, in the eyes of the world, on its greatness and strength; talks contemptuously, and even indignantly, of those governments that suffer their subjects to be oppressed; and ostentatiously proffers its protection to those of all lands who will accept it. Yet all the while the affrighted and imbecile thing sees its own citizens snatched away from it, at the rate of a hundred thousand per annum, by the State governments, and dares neither lift its finger, nor raise its voice, to save one of them from the auctioneer's block, the slave-driver's whip, the ravisher's lust, the kidnapper's rapacity, or the ruffian's violence. The number of its living citizens (to say nothing of the dead) of

whom it has thus been robbed, amounts at this day to some four millions; and the number doubles in every twenty-five years. Nevertheless, its greatest anxiety still is lest its servility and acquiescence shall not be so complete as to satisfy these kidnappers of its citizens. The only symptom of courage it dares ever exhibit, as against a State, is when it attempts some rapacious or unequal taxation, or commits the unnatural crime of pursuing its own flying citizens, not to protect them, but to subject them again to the tyranny from which they have once escaped.

XIII.

While the government of the nation is thus prostrate and degraded, the people of the nation — at least that portion of them who show themselves in political organizations — instead of being alive to the authority of "the supreme law of the land," and the rights of the people under it, are divided into four wretched, infamous factions, all of whom agree in the political absurdity, that the *status* of a man, relative to "the supreme law of the land," is fixed by some subordinate law; that the rights of a man under the constitution of the United States are fixed by the constitutions and laws of the separate States. All of them agree, therefore, that the States may convert at least four millions citizens of the United States into property, with their posterity through all time. All of them agree in, and proclaim, the inviolability of property in man, *within the United States*, where alone the United States government has any jurisdiction of the question; and disagree with each other only as to the inviolability of property in man, *outside of the United States, where the United States have no political jurisdiction at all.*

XIV.

We repeat that the United States has no political jurisdiction at all, *outside of the United States.* By this we mean that it has no political jurisdiction over people inhabiting the new countries west of the United States, which the United States has hitherto

assumed to govern, under the name of "Territories." And we feel bound to make this assertion good.

Where does the constitution grant congress any power to govern any other people than those of the United States? Even the war-making power would not authorize us to hold a conquered people in subjection indefinitely, but only so long as they should remain enemies, or refuse to do justice. The treaty-making power is no power to make treaties adverse to the natural rights of mankind. It, therefore, includes no power to buy and sell mankind, with the territories on which they live. It no more implies a power, on our part, to purchase foreign people, and govern them as subjects, than it implies a power to sell a part of our own people to another nation, to be governed as subjects.

The only other power which can be claimed as authorizing such a government, is granted in the following words:

"The congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory [land] or other property, belonging to the United States."

Here is no grant of general political power over *people*, either within or without the United States; but only a power to control and dispose of, *as property*, the *land* — for "territory" is but land — and other property, belonging to the United States.

To make this idea more evident, let us divide the provision into two parts, and read them separately as follows:

1. "The congress shall have power to *dispose of* the territory [land] or other property, belonging to the United States."

Here plainly is no grant of political power over *people*.

2. "The congress shall have power *to make all needful rules and regulations respecting* the territory [land] or other property belonging to the United States."

Here is plainly no more grant of political power in connection with the land, than in connection with any "other property" belonging to the United States.

The power to "make all needful rules and regulations respecting land or other property belonging to the United States," is no grant of general political power over *people*.

The power granted is only such a degree of power over land

and other property belonging to the United States, as may be necessary to secure such land and other property to the uses of the United States.

That this power is not one to establish any organized government over people, is proved by the fact that the power is certainly as ample in regard to "territory and other property," *within any of the United States*, as to territory and other property, *outside of the United States*. If, therefore, the power included a power to set up an organized government or territory *outside of the United States*, it would equally include a power to set up an organized government *within each State, to the exclusion of the State authority*, wherever the United States had "territory or other property" within a State. But nobody ever dreamed that the power authorized any such political monstrosity as this.

There is nothing in the language of the constitution, that implies that the land or other property spoken of, *is outside of the United States*. And as ours is distinctly a government of the United States, and not of other countries, the legal presumption is that the land and other property — more especially the land — belonging to the United States, is to be found within the United States, and not in other countries.

The United States have no *rightful* ownership of the unoccupied lands west of the United States. It is against the law of nature, and therefore impossible, that they should have any such ownership. Land is a part of the natural wealth of the world, created for the sustenance of mankind, and offered by the Creator as a free gift to those, *and those only*, who take actual possession of it. And actual possession means either actually living upon it, or improving it, by cutting down the trees, breaking up the soil, throwing a fence around it, or bestowing other useful labor upon it. Nothing short of this actual possession can give any one a rightful ownership of wilderness lands, or justify him in withholding it from those who wish to occupy it. Governments, which are but associations of individuals, can no more acquire any rightful ownership in wild lands, without this actual possession, than single individuals can do so. Until such lands are wanted

for actual use, they must remain free and open for anybody and everybody, who chooses, to take possession of, and occupy them. Governments have no more right to assume the ownership of these lands, and demand a price for them, than they have to assume the ownership of the atmosphere, or the sunshine, and demand a price for them. They have no more right to claim the ownership of such lands, than of the birds and quadrupeds that inhabit them; or than they have to claim property in the ocean, and to demand a price of all who either sail upon it, or take fish out of it.

It is no answer to say that our government bought these lands of France or Mexico, for neither France nor Mexico had any rightful property in them, and could, therefore, convey no rightful title to them. Even in lands purchased of the Indians, the United States acquire no rightful property, except only in such as the latter actually cultivated, or occupied as habitations. Those which they merely roamed over in search of game, they had no exclusive property in, and could accordingly convey none.

The United States, therefore, have no rightful property in wild lands, even within the United States. Still less, if possible, have they any such property in wild lands outside of the United States.

There is nothing in the constitution that implies that the United States have any property in *wild* lands, either within or without the United States. "The territory [land] or other property belonging to the United States," spoken of in the constitution, must be presumed to be such land and other property as the United States can *rightfully* own; and not such as they may simply assume to own, in violation of the law of nature, and the natural rights of mankind.

There is just as much authority given to congress, by the constitution, to assume the ownership of the atmosphere, both within and without the United States, and "to dispose of, and make all needful rules and regulations respecting" it, as there is for their assuming such a power over wild lands, either within or without the United States.

This power granted to congress must be construed consistently, and only consistently, with the law of nature, if that be possible, and with the general purposes of the government. It

must, therefore, if possible, be construed as applying to *occupied*, instead of *wild* lands, and to those lying within, rather than to those lying beyond, the geographical limits of the United States. And this is possible. "The power to dispose of, and make all needful rules and regulations respecting the territory [land] and other property belonging to the United States," *and lying and being within the United States*, is a power constantly needed in carrying on the daily operations of the government. It is needed in regard to every post-office, court-house, custom-house, or other real or personal property, whether absolutely owned, or temporarily occupied, by the United States. The power applies as well to lands and buildings temporarily leased, as to those absolutely owned; because a lease is a partial ownership.

The constitution specially provides that "*over all places purchased by the consent of the legislature of the State in which the same shall be*, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, congress shall have power to exercise *exclusive legislation*." But inasmuch as the States might not give their consent — and could not even be expected to give their consent — to this "*exclusive legislation*" over all the "*places*" which the United States might purchase (or lease) for post-offices, court-houses, and "other needful buildings," it was necessary that congress, instead of a "power to exercise *exclusive legislation*" over such "*places*," should have power — without excluding the general jurisdiction of the States — "to make all needful rules and regulations respecting the territory [land, "places"] or other property" thus owned or occupied by the United States, in order to secure them to the uses, for which the United States designed them. Without such a power, the United States could not establish even a post-office, without first getting the consent of the legislature of the State in which it was to be established.

We have, therefore, no need — in order to find "territory" [land, "places"] for this power to apply to — to assume that the United States, in violation of the law of nature, are the owners of wild lands, either within or without the United States. Still less have we need to assume that our government has power to

exercise absolute political authority over peoples outside of the United States, in violation of the natural right of all men to govern themselves.

Peoples living outside of the United States, are, to us, foreign nations, to all intents and purposes. And it is of no importance whether those peoples are many or few; whether those countries are thinly or densely populated; whether the countries are contiguous to, or distant from the United States. In either case they are alike independent of us. Whether they are well, or ill governed, or have no government at all, is, politically speaking, no concern of ours.

Peoples settling on the lands west of the United States, are therefore, so far as we are concerned, independent nations, over whom we have no more political jurisdiction, than over the people of Canada, or England, or France, or Japan. Whether they have any organized governments at all, is no affair of ours, any more than whether the Indian tribes have, or have not, organized governments.

The fact that any of these peoples were once citizens of the United States, does not affect the question. We acknowledge and maintain the natural right of all men to renounce their country. And when our people leave their country, by making their permanent homes beyond its limits, they do renounce it. And if they ever wish to come into the Union, they must be admitted as States, the same as any other nation, that should wish to come into the Union, would have to do.

For these reasons we have, constitutionally, no political jurisdiction whatever over those countries west of the United States, which we are in the habit of governing under the name of "Territories." *

* This question of the power of congress to govern countries outside of the United States, has been twice before the supreme court of the United States. In both cases, although the court declared that "the possession of the power was unquestioned," their efforts to show in what part of the constitution the power was to be found, seemed to be very unsatisfactory, even to themselves.

In the first case, the court said: —

"In the meantime, Florida continues to be a territory of the United States, governed by virtue of that clause in the constitution, which empowers congress

XV.

If any of our citizens are carried off by force into those countries, and there held as slaves, we have the right, by force of arms, if need be, to compel their restoration, the same as if they

'to make all needful rules and regulations respecting the territory, or other property of the United States.'

"Perhaps the power of governing a territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts, that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern, may be the inevitable consequence of the right to acquire, territory. *Whichever may be the source whence the power is derived, the possession of it is unquestioned.*" (Am. Ins. Co. *vs.* Canter; I. Peters, 542.)

Here three possible sources of the power are suggested; but which one of the three is the true source, the court seem wholly unable to decide. It would seem to have been much more in keeping with judicial propriety and integrity, to have definitely determined the source of the power, before declaring that "*whichever may be the source whence the power is derived, the possession of it is unquestioned.*" How the court can say that "the possession of a power is unquestioned," so long as they are unable to determine in what part of the constitution the power is to be found, is, to say the least of it, very mysterious. Nothing, evidently, short of that infallible discernment, which supreme courts assume to possess, could authorize them to affirm thus positively the existence of a power, the source of which they could not discover.

We assume that it has already been shown that the first of these suggestions, viz., that the power to govern territory, outside of the United States, is included in "the power to dispose of, and make all needful rules and regulations respecting the territory, or other property belonging to the United States," is wholly unfounded.

The second suggestion, viz., that the power "may result necessarily from the facts that the territory is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States," assumes the whole point in dispute, which is — whether territory and people, outside of the United States, *are* "within the power and jurisdiction of the United States."

The third suggestion, viz., that "the right to govern, may be the inevitable consequence of the right to acquire, territory," again assumes the whole point in dispute, which is — whether the United States have the right to acquire — that is, to purchase — territory and peoples outside of the United States.

It is plainly against the law of nature, and therefore impossible, for governments to acquire any rightful ownership of wilderness lands, and withhold them from, or demand a price for them of, those persons, who wish to take actual possession of them, and cultivate them. As it is impossible for any nation to have any rightful property in wild lands, it is impossible for one nation to convey any such ownership to another. It is, therefore, impossible that the United States can "acquire" — that is, purchase — any such ownership.

It is also against nature, and therefore impossible, that any government should own its people, as property, and have the right to dispose of them, as property. It is, therefore, impossible that the United States can "acquire," by treaty, any ownership of people outside of the United States, or consequently any right to govern them.

had been carried into any other country. And that is all the political power which our constitution gives us over slavery in those countries. We have no more power to assume general

In the case of *Dred Scott*, the same question came again before the court. And the court (19 Howard, 443) cited and adopted the opinion previously given, viz., that "*whichever may be the source whence the power is derived, the possession of it is unquestioned.*" But they offered no new argument in its support, except the intimation (p. 447) that the power to admit new States into the Union might "authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation entitle it to admission."

But there would be just as much reason in saying that, because A has the right to admit B as a partner in business, therefore he has a right to buy him, and hold him as a slave, until he is fit to be admitted as a partner.

The court confess (p. 446) that —

"There is certainly no power given by the constitution to the federal government to establish or maintain colonies, bordering on the United States, or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its own territorial limits in any way, except by the admission of new States. . . . No power is given to acquire a territory to be held and governed *permanently* in that character."

But they say (p. 447) that —

"It [the territory] is acquired to become a State, and not to be held as a colony, and governed by congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a State, upon an equal footing with the other States, must rest upon the same discretion. It is a question for the political department of the government, and not for the judicial; and whatever the political department of the government shall recognize as within the limits of the United States, the judicial department is also bound to recognize, and to administer in it the laws of the United States," &c. &c.

This pretence of the court, that although the United States have no power to buy territory, and govern it as a colony *for ever*, they nevertheless have a right to buy it and govern it as a colony, until congress, in the exercise of its discretion, shall see fit to admit it as a State, is an entire fabrication and fraud. There is nothing whatever, in the constitution, that *requires* congress *ever* to admit a territory as a State. And if congress have authority to buy territory, and govern it as a colony at all, they have a right to hold it, and govern it as a colony for ever.

The truth is, that all our constitutional law on this subject — that is to say, all the constitutional law that has been practically acted upon by congress — instead of being found in our own constitution, is found only where nearly all the rest of our constitutional law is found, viz., in the tyrannical practices of other governments; and especially in the tyrannical practices of the English Government. Because other governments usurp the ownership of wild lands, and demand a price for them, our government does the same. Because other governments have colonies, and govern them against their will, our government usurps authority to do the same. And because other nations claim to own their colonies as property, and assume to sell them as such, our government claims the right to buy any that may be in the market. When, in truth, it has no more right to buy the people of other nations, than to sell those of our own.

political jurisdiction there, in order to prevent our people being carried there as slaves, than we have to assume similar jurisdiction over any other parts of the earth, in order to prevent our people being carried into them as slaves.

XVI.

Whether, therefore, property in man be, or be not, lawful in the United States, we have no general political jurisdiction over it *outside of the United States*. And we have no more jurisdiction over it in the territories, or countries west of the United States, than we have in any other territories or countries in the world, outside of the United States.

XVII.

If any portion of our people are, in the view of our constitution, lawful property within the United States, then, constitutionally speaking, their owners have the right to carry them out of the United States into any other part of the world, and there hold them, or lose them, according to the laws that prevail there. If, on the other hand, no part of our people are, in the view of the constitution, lawful property within the United States, then, constitutionally speaking, we are bound to prevent any of them being carried out of the country as slaves, no matter what part of the world they may be carried to. And this is all we have to do with slavery *outside of the United States*.

XVIII.

Neither has congress any authority to determine the question whether new States shall be admitted into the Union as slaveholding or as non-slaveholding States. All new States admitted into the Union must come into it subject to the constitution of the United States as "the supreme law." If this "supreme law" declares one man to be the property of another, then, constitutionally speaking, he is and must be such property as

much in the new States as in the old; and congress has no power to prevent it. If, on the other hand, that supreme law declares that there is no property in man, then congress has no power to set aside this supreme law in favor of any new State, any more than in favor of any of the old ones.

XIX.

Finally, even if it were admitted that congress has power under the constitution to govern countries outside of the United States, under the name of "territories," still the law of property, as established by the constitution *within the United States*, would necessarily be the law of those territories; for the constitution would be as much the supreme law of the territories as it is of the United States. If, therefore, the constitution makes a man property within the United States, it would necessarily make him property in the territories. If, on the other hand, the constitution makes every man free within the United States, it would necessarily make every man free in the territories.

XX.

Whether, therefore, we have or have not political jurisdiction over the "territories," so called, the whole question of slavery, so far as our government is concerned, must be settled by determining whether the constitution of the United States, "the supreme law of the land," does or does not make a man a slave *within the United States*. If it does make him a slave *anywhere* within the United States, it makes him a slave *everywhere* within the United States — in old States and new States — and also in the territories, if our government has political jurisdiction over the territories. If, on the other hand, the constitution makes everybody free within the United States, it makes everybody free also in the territories, if our government has jurisdiction there.

XXI.

In short, we have one "supreme law" on this point, extending over all the States, and over any other countries (if any others there be) subject to the jurisdiction of the constitution. And when we shall have determined whether that supreme law makes a man property or not, either in Massachusetts or Carolina, we shall have determined it for all other localities, whether States or territories, within which the constitution now is, or ever shall be, the "supreme law."

XXII.

There is, therefore, no room or basis under the constitution for the four different factions that now exist in this country, in regard to slavery, either in the States, or in the territories. There is room only for this single question, viz.: Does the Constitution of the United States, "the supreme law of the land," make one man the property of another? All who take the affirmative of this question, and intend to live up to that principle, are bound, in consistency, to unite for the maintenance of it in all the States, and in all the territories (if the government has jurisdiction in the territories). All those who take the negative of the same question, and intend to live up to that principle, are bound, in consistency, to unite their forces for carrying that principle into effect throughout the United States, and throughout the territories (if congress has jurisdiction over the territories). And there is no middle ground whatever, on which any man can consistently stand, between these two directly antagonistic positions.

We ask all the people of the United States to take their position distinctly on the one side or the other of this question, at the ensuing election; and not to waste their energies or influence upon any of the frivolous and groundless issues, which divide the four different factions now contending for possession of the government.

XXIII.

Of all these factions, the Republican is the most thoroughly senseless, baseless, aimless, inconsistent, and insincere. It has no constitutional principles to stand upon, and it lives up to no moral ones. It aims at nothing for freedom, and is sure to accomplish it. The other factions have at least the merits of frankness and consistency. They are openly on the side of slavery, and make no hypocritical grimaces at supporting it. The Republicans, on the other hand, are double-faced, double-tongued, hypocritical, and inconsistent to the last degree. We speak now of their presses and public men. Duplicity and deceit seem to be regarded by them as their only available capital. This results from the fact that the faction consists of two wings, one favorable to liberty, the other to slavery; neither of them alone strong enough for success; and neither of them honest enough to submit to present defeat for their principles. How to keep these two wings together until they shall have succeeded in clutching the spoils and power of office, is the great problem with the managers. The plan adopted is, to make, on the one hand, the most desperate efforts to prove that their consciences and all their moral sentiments are opposed to slavery, and that they will do every thing they *constitutionally* can, against it; and, on the other, to make equally desperate efforts to prove that they have the most sacred reverence for the constitution, and that the constitution gives them no power whatever to interfere with slavery in the States. So they cry to one wing of their party, "Put us in power, and we will do every thing we *constitutionally* can for liberty." To the other wing, they cry, "Put us in power. You can do it with perfect safety to slavery — for *constitutionally* we can do nothing against it, where it is."

It is lucky for these Jesuitical demagogues that there happen to be, bordering upon the United States, certain wilderness regions, over which the United States have hitherto usurped jurisdiction. This gives them an opportunity to make a show of living up to their professions, by appearing to carry on a terrific war against slavery, *outside the United States, where it is not;*

while, *within the United States*, "*where it is*," they have no *political* quarrel with it whatever, but only make a pretence of having very violent moral sentiments.

Outside of the United States, where slavery is not, and where the United States really have no jurisdiction, the battle is made, by these men, to appear to be a real battle of statutes, at least, if not of principles. Within the United States, where slavery is, and where the United States *have* jurisdiction, the contest is plainly a mere contest of hypocrisy, rhetoric, and fustian, and a selfish struggle for the honors and spoils of office.

In this warfare, in which it is understood that slavery is not to be hurt, the weapons employed are mostly absurd, bombastic, and fraudulent watchwords, in preference to any *constitutional* principles, that might be dangerous to the object assailed. Among the watchwords are these: "*Freedom National, Slavery Sectional;*" "*Free Labor and Free Men;*" "*Non-extension of Slavery;*" "*Down with the Slave Oligarchy*," &c., &c. All these, as used by the Republicans, are either simple absurdities, or fair-sounding falsehoods.

Take, for example, "*Freedom National, Slavery Sectional.*" This is both an absurdity and a falsehood, on its face; for how can freedom be *national*, so long as any *section* of the nation can be given up to slavery? "*Freedom National*," to have any sense, implies a paramount law for freedom pervading the whole nation; and is inconsistent with the idea that slavery can be legal in so much even as a *section* of the nation. But, in the mouths of the Republicans, "*Freedom National, Slavery Sectional*," means simply that, *for territory outside of the United States*, there is a paramount national law, that requires, or at least permits, liberty; while, within the United States, this national law is, or legally may be, overborne by local or sectional laws; and thus the entire territory of the nation be given up to "*sectional* slavery."

If there be any territory, *within the United States*, in regard to which this assumed national law of freedom is paramount, it can be, at most, only the District of Columbia, and a few places occupied as forts, arsenals, &c., over which congress have "ex-

clusive legislation," — places which are but as pin-points on the map of the nation.

And yet this false, absurd, self-contradictory, and ridiculous motto, which really means nothing for freedom, but gives up the whole nation to slavery, if the sections (States) so choose, has already had a long life, as expressing one of the cardinal principles of the Republican faction.

The motto, "*Free Labor and Free Men*," in the mouths of the Republicans, is as false and Jesuitical as "*Freedom National, and Slavery Sectional.*" In the mouths of *honest* men, it would imply that they were intent upon giving freedom to labor and men, *that now are not free.* But in the mouths of Republicans, it only means that they are looking after the interests of the labor and the men, *that are already free;* and that, as for the the labor and the men, *that are not free*, they may remain in bondage for ever, for aught the Republicans will ever do to help them out of it.

This false, heartless, and infamous watchword — for it deserves no milder description — has also had a long life, as expressing a cardinal principle of the party.

But "*The Non-Extension of Slavery*" is the transcendant principle of these pretended advocates of liberty. It is in this sign they expect to conquer. What does it mean, or amount to? Does it mean the non-extension of slavery *in point of time?* No; for slavery may be extended through all time, without obstruction from them. Does it mean that slavery shall not be extended to *new victims?* No; for they consent that it may be extended to all the natural increase of the existing slaves, until at least the 850,000 square miles, now occupied by slavery, shall be filled with slaves to its utmost capacity.

What, then, is the extension to which they are so violently opposed? Why, it is only this: If a slave is carried by his owner from one place to another, *that is an extension of slavery!*

To continue a man and his posterity in slavery through all time, in one locality, is no extension of slavery, within the Republican meaning of the term. But to remove him from that locality to another, is an "extension of slavery" too horrible for these devotees of liberty to think of.

But these Republicans, either foolishly or fraudulently, encourage the idea, that if slavery can but be confined within the space it now occupies, it will soon die out; whereas, in truth, so far as mere space is concerned, it probably has enough already for it to live and flourish in for two, three, or five hundred years.

"*Down with the Slave Oligarchy*," would, to the minds of most men, convey the idea of an intention to overthrow the power of the slaveholders, by annihilating their right of property in their slaves. But in the creed of the Republicans, "*Down with the Slave Oligarchy*" means no such thing. It means only that the slaveholders shall not have so much influence in the administration of the national government, and especially that they shall not have so large a share of the national offices, as they have hitherto had the address to secure! And these wise Republicans imagine they can overthrow the slave oligarchy, and destroy their influence in the government, at the same time that they (the Republicans) maintain the inviolability of the three or four thousand millions of dollars of property in men, on which the slave oligarchy rest, and whence all their influence is derived.

But suppose the slave oligarchy can be overthrown, after this plan of the Republicans, what right have the latter, as consistent men, acting under the constitution, and pledged to its support, to attempt to overthrow the slave oligarchy, so long as they (the Republicans) concede that the oligarchy *are not violating the constitution*, by holding their fellow-men as property? According to the Republican interpretation of the constitution, the slave oligarchy are just as good citizens of the United States, exercising only their constitutional rights, as are the Republicans themselves. Indeed, there would be nothing inconsistent in the entire slave oligarchy being members of the Republican faction, in full communion. There is nothing in the political creed of the latter, that really need stick at all in the throats of the former; and the Republicans themselves, or, at least, a large portion of them, would, no doubt, be very much delighted by such an accession to their numbers.

"*The Suppression of the Slave Trade*" appears to be becoming one of their party watchwords. But, if southern juries will neither indict, nor convict, how is the slave trade to be suppressed?

and how can the Republicans ask or expect southern juries to indict, or convict, for bringing slaves from Africa, so long as they (the Republicans) concede the right of property in four millions of native Americans? There is plainly no consistent way whatever, of suppressing the slave trade, except by giving freedom to the slaves already in the country, and all that may be brought in, and thus putting an end to the slave market. And there is, probably, no other *possible* way of suppressing it. Certainly, there is no other possible way of suppressing it, unless by such an enormous expenditure as the nation will never be likely to incur. "*The Suppression of the Slave Trade*" may, therefore, fairly be set down as another of the fraudulent watchwords of the Republican faction.

Still another specimen of the hypocrisy of this faction, is to be found in its name. It has taken to itself the name of *Republican*. They are great sticklers for the constitution, and many, or most, of them "*strict constructionists*," at that. The word, "*Republican*," is found but once in the constitution, and we are bound to presume that this constitutional party have chosen their name with reference to the signification of that word in the constitution. But do they propose "to guaranty to every State in this Union a republican form of government?" — a government that shall secure to all the citizens of the United States, within the States, the protection of the laws? And do they propose that the United States government shall ascertain for itself, independently of the State governments, who its own citizens are, within the States, that it *may* fulfil this guaranty to them? Not at all. So far from it, they hold, in the language of the Chicago platform, that —

"The maintenance inviolate of the rights of the States, and, especially, the right of each State to order and control its own domestic institutions, according to its own judgment exclusively, is essential to that balance of power, on which the perfection and endurance of our political faith depend; and we denounce the lawless invasion, by armed force, of any State or Territory, no matter under what pretext, as among the gravest of crimes."

This means, if it means any thing, that the "Slave Oligarchy," or any other body of men, however small, who may chance to get the power of a State into their hands, may reduce anybody

and everybody, black and white, to slavery, *without interference from the general government;* and that for private persons to go to the rescue of their fellow-men, from these robbers, ravishers, and kidnappers, would be "among the gravest of crimes."

This is giving to slavery more than it ever asked. Even the *Dred Scott* judges themselves set up no such claim for it as this. Their opinion admits that *whites* are citizens of the United States, and, because they are such, cannot be enslaved by the States. Those judges are, in fact, "*non-extensionists*," and have a much better claim to that title than the Republicans; for they conceded that slavery could not be extended beyond the limits of a single race; whereas the Republicans acknowledge no such, or any other, limit to slavery in the States; or what is the same thing, to slavery in the United States.

We believe that no body even of southern men, respectable either for numbers, or as representatives of southern sentiment, have ever attempted to carry this doctrine of *State Rights* to such lengths, in behalf of slavery, as it is here conceded to them by the pretended friends of liberty. In fact, these men have been attempting, for years, to rival, at least, if not to outdo, even southern men, in their advocacy of this trumpery doctrine of "*State Rights*." And they have at length succeeded in absolutely outdoing them. And their motive has been, that they might gain the reputation of being champions of liberty at the north, and at the same time avoid the necessity of performing any service for liberty at the south, where alone any real service was needed.

It is of no avail, as a defence for the Republicans, to say, that, in another resolution, at Chicago, they declared —

"That the maintenance of the principles promulgated in the Declaration of Independence, and embodied in the federal constitution, is essential to the preservation of our Republican institutions; that the federal constitution, the rights of the States, and the union of the States, must and shall be preserved; and that we re-assert 'these truths to be self-evident, — that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.'"

It is of no avail that they declare these principles, in one breath, when, in the next, they declare the unlimited right of the States to reduce men to bondage. That they should assert such opposite principles, only proves what unblushing hypocrites and liars they are; and that they are ready to assert any principles whatever, from the extreme of liberty, to the extreme of slavery, if they can thereby conciliate or deceive the two opposite wings of their faction, and keep them together until their object of gaining possession of the government of the country shall be attained.

We have recently been told, on high Republican authority, that slavery is a "*five-headed enormity.*" Well, be it so. How do the Republicans propose to combat this "five-headed enormity?" We think we have shown that they propose to combat it only by an imposture, that is at least twelve-headed. This twelve-headed imposture consists of these twelve separate impostures, to wit: —

1. The imposture of "*Freedom National, and Slavery Sectional.*" That is to say, national freedom outside of the nation, and sectional slavery all over the nation itself, if the separate sections (States) shall so choose.

2. The imposture of "*Free Labor and Free Men.*" That is to say, seeking the interests alone of the labor and the men, that are already free; and leaving the labor and the men, that are not free, to their fate.

3. The imposture of "*Non-Extension of Slavery.*" That is to say, extending slavery through all time, and to as many new victims as the States respectively may choose; and "*non-extending*" it only by not removing the slaves from one place to another; but confining them within the narrow precincts of 850,000 square miles, where it is to be presumed, they will soon die out from compression, suffocation, or some other equally probable cause.

4. The imposture of "*Down with the Slave Oligarchy.*" That is to say, maintaining the slaveholders' right of property in their slaves, but depriving them of the political influence which that property naturally gives them.

5. The imposture of "*The Suppression of the Slave Trade.*" That is to say, the suppression of the slave trade by statutes, which slaveholding juries are expected to execute; the suppression of the slave trade, while the slave markets are kept open; the suppression of the slave trade in native Africans, while maintaining the slavery of native Americans.

6. The imposture of a party, calling itself "*Republican*," and professing to be a strictly constitutional party; and yet refusing to perform the only duty which the constitution enjoins under the specific name of "*Republican.*"

7. The imposture of declaring that the constitution of the United States can be "the supreme law of the land," and yet have no effect in fixing the political *status* of the people.

8. The imposture of "*State Rights.*" That is to say, the imposture of declaring that the States can reduce everybody, or anybody, to slavery, and thus deprive them of all rights under the national government; and yet the national government have no right to interfere for their protection.

9. The imposture of assuming that a government, which purports to be distinctly the government of the United States, and of no other country or people on earth, should have (as the Republicans claim) so much more political power over countries and peoples outside of the United States, than it has over those within the United States.

10. The imposture of assuming that the Republicans or any body else can make great conquests for liberty, and at the same time do nothing at all to the injury of slavery.

11. The consummate imposture of supposing that rhetoric, and fustian, and bombast, are the only weapons necessary to rid the earth of tyrants.

12. The transcendent imposture of supposing that the Republican party itself is, *or ever has been*, any thing else than an imposture.

We could probably find still other "heads" of this Republican imposture, if we had leisure and inclination to search for them. But, however many we might find, we should undoubtedly find them all filled with the same kind of emptiness as those we have enumerated.

But infidelity to their own convictions of the true character of the constitution of the United States, in its relation to slavery, is the crowning inconsistency, hypocrisy, and crime of large numbers, at least, of the Republican faction.

There is no reason to doubt that very large numbers of that wing of the party, which is sincerely favorable to liberty, including a due proportion of their public men, believe that the constitution of the United States is not only free itself from the stain of slavery, but that it gives liberty to *all* "the people of the United States," "any thing in the constitutions or laws of the States to the contrary notwithstanding."

Of the public men, who hold this belief, there is much evidence before the public, tending to prove — probably sufficient rationally to prove — that William H. Seward is one; that such has been his belief for many years; and that he has intended to avow it, and act upon it, so soon as he could do so with safety to his political aspirations. Nevertheless, such was the unprincipled character of the faction on whom he relied for his aggrandizement, and such the unprincipled character of the man himself (notwithstanding he has been supposed to combine more ability, courage, and integrity, than any other man of the faction) that, on the 29th of February last, he was weak and wicked enough, in view of his political exigencies, not only to ignore all constitutional opinions favorable to liberty, but virtually to ignore all the moral sentiments he had ever professed on the subject. With a deliberate heartlessness, so monstrous as to be disgusting, he treated of four millions of human beings — having the same natural rights with himself — and having also, in his own estimation (as we think) equal political rights with himself, under the constitution he had sworn to support — we say he heartlessly treated of these four millions of men, and their posterity, as so much capital — not, perhaps, the best form of capital — but whether, or not, the best form of capital, was for the owners to judge, and for experience to determine. And if, before this experiment should be closed, anybody should presume to recognize them as men, and attempt to convert them from capital into men; or recognize them as citizens of the United States, and go to

their rescue (as any one, on the hypothesis of their being such citizens, might legally do) such a person, said Mr. Seward, must necessarily, and may justly, be hung.

Thus this shameless man stood out, and stripped himself before the eyes of all people, and labored, in their presence, to cover himself all over with this moral and political filth, in order to deaden the hated odors of liberty, humanity, and justice, which he feared might be still clinging to him, as relics of his former professions (and principles, if he ever had any), and thereby fit himself, if possible, to become the candidate of his faction. And the infamous character of the faction itself is to be inferred from the fact, that all this self-defilement, on his part, was unsuccessful to secure for him their confidence. They feared that at least the smell of liberty might still be upon him ; and, therefore, fixed their choice upon one, who, if not more clear of all real love for freedom, was at least less suspected of any such disqualification.

What we have supposed to be true of Mr. Seward, we have good reason to believe to be also true of several, perhaps many, other Republican members of congress, viz., that, believing the slaves in this country to be, in the view of the constitution of the United States, full citizens of the United States, equally with themselves, they nevertheless, for the sake of gaining power, publicly acknowledge and declare their enslavement to be constitutional, and that the general government has no authority to liberate them.

We think the friends of liberty, in every congressional district, should look sharply after their representatives on this point. We do not wish to send men to congress, who will belie the constitution, they swear to support. We do not even wish to send them there to give us essays on the moral nature of slavery. We understand that matter already. But, as John Brown would say, we want men there, who, believing the constitution gives liberty to all, *will put the thing through.*

We understand the reasons given, in private, by these men, why they do not declare that slavery is unconstitutional, and that the general government has power to abolish it, to be, *That the people are not ready for it! That the Republicans must first get*

possession of the government! That is to say, these men must persist in their false asseverations, that the general government has no power to abolish slavery; that they, if placed in possession of that government, never will abolish it; but will, on the contrary, sustain it in the States where it is — they must persist in these asseverations, until they get the general government into their hands; then, as they wish it to be inferred, they will avow the fraud by which they obtained their power; will take it for granted that the people *are* ready to be informed what the constitutional law of the country really is; and will proceed to put it into execution, by giving liberty to all!

Spirits of Hampden, and Pym, and Sidney, and Elliot; of Otis, and Jefferson, and the Adamses! Did you, in the full possession of freedom of speech and the press; with steam and electricity to carry your words to the people; with boundless wealth, the moral sentiments of the world, and the constitutional law of your countries, on your side — did you, under such circumstances as these, resist tyranny, by asserting it to be legal, and swearing that you would support it, where it prevailed? and declaring that you would only oppose its extension into new regions? Did you do all this under the pretence that the people were not ready for the truth? that you must get possession of all the high places of power, before you could do or say any thing for freedom? and that, when you should have obtained these places, you would declare the frauds and perjuries you had committed to gain them? and would then become traitors to tyranny, and faithful to freedom? Was it by such ways as these, that you prepared the hearts of the people to stand by you in the great struggles which you saw before you? Or did you not rather, in the midst of poverty; with feeble means of communication and concert; and with dungeons and scaffolds before your eyes, proclaim, with all your strength, that tyranny, in its veriest strongholds, was but an usurpation? confident in the truth, that, next to the law of nature, the constitutional law of your countries was the strongest weapon you could use in behalf of liberty? and that fraud, and falsehood, and perjury were instruments as useless and suicidal as they were base?

Tell us, also, are the men we now have among us, the Sewards, and Chases, and Sumners, and Greeleys, and Lincolns, and Hales — are these, and such men as these, your legitimate successors? If they are, why have not mankind spit upon your memories?

XXIV.

It is abundantly evident, from what has now been said, that the constitution of the United States, "the supreme law of the land," must necessarily fix the *status* of every individual, within the United States, either as a free person, or a slave; and that it must do this, "any thing in the constitution or laws of any State to the contrary notwithstanding." It is also abundantly evident that, if any person be made free by that supreme law, he is free everywhere under that law; and that, if any one be made a slave by that law, then, constitutionally speaking, he is a slave everywhere under that law; and his owner may carry him, and hold him, as property, wherever he pleases, within the United States, free of all responsibility to the constitutions or laws of the States.

It is also evident that, if the United States constitution itself makes a man slave, the general government, no more than the State governments, can give him his freedom.

The real issue, then, before the country, is, whether slavery is lawful everywhere within the United States, with no power, either in the general or State governments, to prohibit it, without an amendment to the constitution of the United States? or whether it be unlawful everywhere, within the United States, and it be the duty of both the general and State governments to prohibit it?

We entreat all, who act politically under the constitution of the United States, to keep this issue distinctly in view, and to hold all men and all parties strictly to it; and to give no vote, and no word of sympathy or support, to any man, or body of men, who either evade it, or hesitate, or equivocate about it. Above all, give no vote or support to those public men, who give their rant,

declamation, and pretended moral sentiments to liberty, and, at the same time, give over to slavery the constitution of the country, and their oaths to support it. These men are practically the best supporters of slavery there now are in the country. They do it a service, which no other men can. From the confidence reposed in their professions, they have power to deceive honest men as to their rights and duties under the constitution, and thus hold them back from any direct assault, political or otherwise. And this power they are exerting to their utmost for the security of slavery. The open friends of slavery have nearly or quite lost all power of this kind. They have also deprived themselves of nearly all moral sympathy and support. By their indiscreet and headlong zeal for slavery, they long ago disgusted everybody but themselves. They have now succeeded in disgusting even themselves, especially in the north. Their ranks are broken, their minds disaffected, and both their moral and political power in a great measure wasted away. Should any one of the factions, into which they are divided, succeed in filling the executive department of the government, that acquisition will give them no real power in the country. Their possession of that department, therefore, is not a thing to be dreaded. Better, far better, that the presidency should be in the hands of an open, but powerless enemy of liberty, than in those of a powerful, but false, perjured, and traitorous friend.

We, therefore, entreat that all, who give their votes at all, at the ensuing election, will give them unequivocally for freedom. It will not be necessary that they should wait for, or that there should be, any national nomination of candidates. It will be sufficient that, in each State, electoral candidates be named. If any of them should be chosen, they can give their votes (as the constitution contemplated they would give them), for the persons they shall think most worthy.

But if, as is very likely to be the result, no one of these electoral candidates should be chosen, the votes given for them will nevertheless not have been thrown away. The great object is to procure the defeat of the Republicans. If defeated on the sixth of November, the faction itself will be extinct on the seventh. Those

of its members who intend to support slavery, will then go over openly into its ranks; while those who intend to support liberty, will come unmistakably to her side. She will then know her friends from her foes. And thenceforth the issue will be distinctly made up, whether this be, or be not, a free country for all? And this one issue will hold its place before the country, until it shall be decided in favor of freedom.

THE

UNCONSTITUTIONALITY OF SLAVERY.

ENLARGED EDITION.

BY LYSANDER SPOONER.

PUBLISHED AND FOR SALE BY

BELA MARSH,

14 BROMFIELD STREET, BOSTON

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NOTICES.

HON. WILLIAM H. SEWARD writes to Gerrit Smith concerning it as follows:

"AUBURN, November 9th, 1855.

MY DEAR SIR: I thank you for sending me a copy of Mr. Spooner's treatise. I had bought a copy of the first edition. It is a very able work, and I wish that it might be universally studied. The writing and publishing of such books is the most effective way of working out the great reformation which this nation is required to make by the spirit of humanity.

Very sincerely your friend and obedient servant,

WILLIAM H. SEWARD.

The HONORABLE GERRIT SMITH."

HON. ALBERT G. BROWN, *Senator in Congress from Mississippi*, in the Senate, Dec.

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2d, 1856, (as reported in the Congressional Globe) after describing the book, as "making an argument in favor of the Constitutional power of Congress, not only to interfere with, but to abolish, slavery in the southern States of the Union," said:

"The Senator [Wilson] did not say, — what I am willing to say myself — that the book is ingeniously written. No mere simpleton could ever have drawn such an argument. If his premises were admitted, I should say at once that it would be a herculean task to overturn his argument."

[Although Mr. Brown thus leaves it to be inferred that he thought there might be some error in the premises, he made no attempt to point out any. It would seem to be incumbent on him to do so.]

GERRIT SMITH says: "The more I read that admirable, invincible, and matchless argument, which Lysander Spooner has made to show the unconstitutionality of slavery, the more I am pleased with it. He yields nothing but what the legal rules of interpretation compel him to yield. And why should he make unnecessary concessions in an argument undertaken in behalf of all that is sacred and vital in the rights of man? Were I studious of fame or usefulness, I had rather be the author of this manly, brave, and independent argument against the constitutionality of slavery, than of any other law argument ever written, either in this age, or in any former age—either on this side, or on the other side, of the Atlantic. Why will not all lawyers read it? Who of them could read it without being convinced that slavery is unconstitutional?"

WENDELL PHILLIPS, without confessing his conviction of its truth, says: "This claim (of the anti-slavery character of the constitution) has received the fullest investigation from Mr. Lysander Spooner, who has urged it with all his unrivalled ingenuity, laborious research, and close logic."

ELIZUR WRIGHT calls it "One of the most magnificent constitutional arguments ever produced in any country. It needs such a work as Mr. Spooner's on constitutional law, to make the constitution of the least value to us as a shield of rights."

WILLIAM LLOYD GARRISON, speaking of Part First, and disagreeing to its conclusions, on the ground that the words of the constitution do not fully express the intentions of its authors, yet says: "His logic may be faultless, as a mere legal effort. We admit Mr. Spooner's reasoning to be ingenious; perhaps, as an effort of logic, unanswerable. It impresses us as the production of a mind equally honest and acute. Its ability, and the importance of the subject on which it treats, will doubtless secure for it a wide circulation and a careful perusal."

JOSHUA LEAVITT says, of Part First: "It is unanswerable. There will never be an honest attempt to answer it. Neither priest nor politician, lawyer nor judge, will ever dare undertake to sunder that iron-linked chain of argument, which runs straight through this book from beginning to end."

NATHANIEL P. ROGERS, speaking of Part First, and agreeing with some of its positions, and disagreeing with others, says: "It is a splendid essay. If the talent laid out in it were laid out in the bar, it would make the author distinguished and rich." "This essay should give the author a name at the Boston bar. It will at the bar of posterity."

SAMUEL E. SEWALL, Esq., says of Part First: — "It merits general attention, not merely from the importance of the subject, but from the masterly manner in which it is handled. It everywhere overflows with thought. We regard it as a great arsenal of legal weapons to be used in the great contest between liberty and slavery. I hope it will receive the widest circulation."

J. FULTON, Jr., says of Part First: "Now that I have read it, I feel bound to say

that it is the most clear and luminous production that I have ever read on the subject. It begins without a line of preface, and ends without a word of apology. It is a solid mass of the most brilliant argument, unbroken, as it seems to me, by a single flaw, and treads down as dust everything which has preceded it upon that subject. Let every friend of the slave read the work without delay. I believe it is destined to give a new phase to our struggle."

RICHARD HILDRETH says of Part First: "No one can deny to the present work the merit of great ability and great learning. If anybody wishes to see this argument handled in a masterly manner, with great clearness and plainness, and an array of constitutional learning, which, in the hands of most lawyers, would have expanded into at least three royal octavos, we commend them to Mr. Spooner's modest pamphlet of one hundred and fifty pages."

ELIHU BURRITT says: "It evinces a depth of legal erudition, which would do honor to the first jurist of the age."

The *True American*, (Cortland County, N. Y.,) says: "It is an imperishable and triumphant work. A law argument that would add to the fame of the most famed jurist, living or dead."

The Bangor *Gazette* says: "It is indeed a masterly argument. No one, unprejudiced, who has supposed that that instrument (the constitution) contained guarantees of slavery, or who has had doubts upon the point, can rise from the perusal without feeling relieved from the supposition that our great national charter is one of slavery and not of freedom. And no lawyer can read it without admiring, besides its other great excellences, the clearness of its style, and its logical precision."

The Hampshire *Herald*, (Northampton) says: "It is worthy the most gifted intellect in the country."

WILLIAM L. CHAPLIN says: "This effort of Mr. Spooner is a remarkable one in many respects. It is unrivalled in the simplicity, clearness, and force of style with which it is executed. The argument is original, steel-ribbed and triumphant. It bears down all opposition. Pettifogging, black-letter dullness, and pedantry, special pleading and demagogism, all retire before it. If every lawyer in the country could have it put into his hands, and be induced to study it, as he does his brief, it would alone overthrow slavery. There is moral force enough in it for that purpose."

The *Liberty Press*, (Utica,) says: "The author labors to show, and does show, that slavery in this country is unconstitutional, and unsustained by law, either state or federal."

The *Granite Freeman* says: "We wish every voter in the Union could have the opportunity to read this magnificent argument. We should hear no more, after that, of the 'compromises of the Constitution' as an argument to close the lips and palsy the hands of those who abhor slavery, and labor for its removal."

The *Charter Oak* says: "Of its rare merit as a controversial argument, it is superfluous to speak. It may, in fact, be regarded as unanswerable, and we are persuaded that its general circulation would give a new aspect to the Anti-Slavery cause, by exploding the popular, but mistaken notion, that slavery is somehow entrenched behind the Constitution."

The *Liberty Gazette* (Burlington, Vt.,) says: "This work cannot be too highly praised, or too extensively circulated. Its reasoning is conclusive, and no one can read it without being convinced that the constitution, instead of being the friend and protector of slavery, is a purely Anti-Slavery document."

The *Indiana Freeman* says: "Every Abolitionist should have this admirable work, and keep it in constant circulation among his neighbors."

SYNOPSIS.

CHAP. I. *What is Law?* (p. 5.) Nothing inconsistent with justice can be law. Falsehood of the definition, that "Law is a rule of civil conduct, prescribed by the supreme power of a State."

[Where the genuine trial by jury prevails, this principle can be carried out in practice.]

CHAP. II. *Written Constitutions.* (p. 15.) Admits, for the sake of the argument, that constitutions and statutes, inconsistent with justice, may be made law; and insists only that our constitutions shall be interpreted by the established rules, by which all other legal instruments are interpreted; one of which rules is, that all words, that are susceptible of two meanings, one favorable to justice, and the other to injustice, shall be taken in the sense favorable to justice.

CHAP. III. *The Colonial Charters.* (p. 21.) That these charters were the constitutional law of the Colonies up to the time of the Revolution; that the provisions in them to the effect that their legislation should be "consonant to reason, and not repugnant or contrary, but so far as conveniently may be, agreeable to the laws, statutes, customs, and rights of this our kingdom of England," made it impossible that slavery could have any legal existence in the Colonies up to the time of the Revolution; and that the decision of the King's Bench, in Somersett's case, was as much applicable to the Colonies as to England. *Note* corrects Bancroft's statement, that England ever legalized the slave trade.

CHAP. IV. *Colonial Statutes.* (p. 32.) Shows that the Colonial legislation, on the subject of slavery, failed to identify, with legal accuracy, the persons to be made slaves; and, therefore, even if such legislation had been constitutional, would have failed to legalize slavery. That, consequently, there was no legal slavery in the country, up to the time of the Revolution.

CHAP. V. *The Declaration of Independence.* (p. 36.) By this the nation declares it to be "a self-evident truth," that all men are created free and equal. All "self-evident truths" are necessarily a part of the law of the land, unless expressly denied. The nation, as a nation, has never denied this self-evident truth, which it once asserted. This truth is, therefore, a part of the law of the land, and makes slavery illegal.

CHAP. VI. *The State Constitutions of* 1789. (p. 39.) None of the State constitutions in existence in 1789, established or authorized slavery. All of them, on their face, are free constitutions. Shows that the words "*free*," and "*freeman*," used in these constitutions, were used in the English or political sense, to designate native or naturalized persons, as distinguished from aliens, or persons of foreign birth not naturalized; and that they were, in no case, used to designate a free person, as distinguished from a slave. That the use of the words in this sense, in the State constitutions of 1789, as they had been previously used in the colonial charters, and colonial legislation, furnish an authoritative precedent, by which to fix the meaning of the words, "*free persons*," in the Constitution of the United States, in the clause relative to representation and direct taxation.

CHAP. VII. *The Articles of Confederation*, (p. 51), contain no recognition of slavery; but use the word "*free*" in the English or political sense, to signify the native and naturalized citizens, as distinguished from aliens; and thus furnishes a precedent, authorized by the whole nation, for giving the same meaning to the word "*free*" in the constitution.

CHAP. VIII. *The Constitution of the United States.* (p. 54.) This chapter, *in the first place*, takes it for granted to have been shown that slavery had no legal existence up to the time of the adoption of the United States Constitution. It then says that that cou-

stitution certainly did not create or establish slavery as a new institution; that the most that can be claimed, is that it recognized the legality of slavery so far as it then legally existed under the State governments; but that, as slavery then had no legal existence, under the State governments, any intended recognition of it, by the Constitution of the United States, must necessarily have failed of effect. That consequently *all* "the people of the United States" were made "citizens of the United States" by the constitution; and therefore could never afterwards be made slaves by the State governments.

Secondly. (p 56.) Shows, from its provisions, that the Constitution of the United States does not recognize slavery as a legal institution, but presumes all men to be free; denies the right of property in man; and, of itself, makes it impossible for slavery to have a legal existence in any of the United States. Shows, (p. 67,) that the clause relative to persons held to service or labor, has no reference to slaves; that (p. 73) the term, "*free persons*," in the clause relative to representation, is used in the political sense, to designate native and naturalized persons, as distinguished from persons of foreign birth, not naturalized; that (p. 81) the clause relative to "migration and importation of persons," does not imply that the persons imported are slaves; that it makes no discrimination as to the persons, whether African or European, to be imported; that it as much authorizes the importation of Englishmen, or Frenchmen, as slaves, as it does Africans; that it would, therefore, be a piratical constitution if the importation of persons implied that the persons to be imported were slaves; that (p. 87) the clause relative to the protection of "the States against domestic violence," does not imply the existence or legality of slavery, or protection against slave insurrections; that (p. 90) "We, the people of the United States," means *all* the people of the United States; the constitution, therefore, made citizens of *all* the then people of the United States; that (p. 95) the "power to regulate commerce," is a power to regulate commerce among *all* the people of the United States, and implies that all are free to carry on commerce; that (p. 96) the power to establish post offices, is a power to carry letters for all the people, and implies that all the people are free to send letters; that (p. 96) the power to secure to authors and inventors their exclusive right to their writings and discoveries, implies that all capable of writings and discoveries, are capable of being the owners thereof; that (p. 96) the power to raise armies, implies that Congress have power to accept volunteers, or hire soldiers by contract with themselves, and that all are free to make such contracts; that (p. 97) the power to arm and discipline the militia, implies that all are liable to be armed and disciplined; that the right to keep and bear arms, is a right of the whole people; that (p. 98) the prohibition upon any State law impairing the obligation of contracts, implies that all men have the right to enter into all contracts naturally obligatory; that (p. 99) all natural born citizens are eligible to the Presidency, to the Senate, and to the House of Representatives; that (p. 102) the trial by jury implies that all persons are free; that (p. 102) the *Habeas Corpus* denies the right of property in man; that (p. 105) the guaranty to every State of a republican form of government, is a guaranty against slavery.

CHAP. IX. *The Intentions of the Convention.* (p. 114.) Personal intentions of the framers of no legal consequence to fix the legal meaning of the constitution. The instrument must be interpreted as being the instrument of the whole people.

CHAP. X. *The Practice of the Government.* (p. 123.) The practice of the government, under the constitution, has not altered the meaning of the constitution itself. The instrument means the same now, that it did before it was ratified, when it was first offered to the people for their adoption or rejection.

CHAP. XI. *The Understanding of the People.* (p. 124.) No legal proof, and not even a matter of history, that the people, before they adopted the constitution, understood that it was to support slavery. Could never have been adopted, had they so understood it.

CHAP. XII. *The State Constitutions of* 1845. (p. 126.) Do not authorize slavery; do not designate, nor authorize the State legislatures to designate, the persons to be made slaves. Have provisions repugnant to slavery. The treaties for the purchase of Louisi-

ana and Florida, imply that *all* the "inhabitants" were free, possessing the rights of liberty, property, and religion, and were to become citizens of the United States.

CHAP. XIII. *The Children of Slaves are born Free.* (p. 129.) Shows that, even if the persons held as slaves at the adoption of the Constitution, were to continue to be held as slaves, their children, born in the country, were nevertheless all to be free by virtue of natural birth in the country.

PART SECOND.

CHAP. XIV. *The Definition of Law.* (p. 137.) The definition of law, given in chapter first, insisted on and defended. Additional authorities cited in note.

CHAP. XV. *Ought Judges to resign their seats?* (p. 147.) No; but to continue to hold them, and do justice.

CHAP. XVI. *The Supreme power of a State.* (p. 153.) Absurd results from the theory that the legislature represents "the supreme power of the State."

CHAP. XVII. *Rules of Interpretation.* (p. 155.) Examines the established rules of legal interpretation, and shows that they required the word "FREE," or the term "FREE PERSONS," in the clause relative to representation, to be interpreted to mean, native and naturalized persons, as distinguished from immigrants not naturalized; and not to mean persons enjoying their personal liberty, as distinguished from slaves.

CHAP. XVIII. *Servants counted as Units.* (p. 237.) The provision that "those bound to service for a term of years," should be included among the "FREE PERSONS," implies that there were to be no slaves.

CHAP. XIX. *Slave Representation.* (p. 238.) Absurdity and injustice of it, a conclusive reason against any interpretation authorizing it.

CHAP. XX. *Why aliens are counted as three-fifths.* (p. 242.) Not BEING full citizens, ought not to be counted as such. Inequality produced among the States by doing so.

CHAP. XXI. *Why the words "Free Persons" were used.* The word "FREE," had always been the technical word, both in this country and in England, for describing native and naturalized persons, as distinguished from aliens. The indefiniteness of the word "CITIZEN" made it an improper word to be used, where precision of meaning was required.

CHAP. XXII. *"All other Persons."* (p. 257.) These words used to avoid the use of the unfriendly and inappropriate word "aliens," and also to include "Indians not taxed."

CHAP. XXIII. *Additional Arguments on the word* FREE. (p. 265.) Showing that this word must be taken in the political sense, before mentioned, and not as distinguished from slaves.

CHAP. XXIV. *Power of the General Government over Slavery.* (p. 270.) Origin and necessity of the power to abolish slavery in the States.

APPENDIX A. FUGITIVE SLAVES. (p. 279.) Extended legal and historical argument on this subject.

APPENDIX B. SUGGESTIONS TO ABOLITIONISTS. (p. 290.) Abolitionists can abolish slavery legally, only by taking the ground that the United States Constitution authorizes the general government to abolish it.

AN ESSAY

ON THE

TRIAL BY JURY.

By LYSANDER SPOONER.

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BELA MARSH,

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THE theory of this book is that the ancient and common-law juries, such as we are now constitutionally entitled to, were mere courts of conscience, who tried, and whose oaths required them to try, all causes, both civil and criminal, according to their own notions of justice, regardless of all legislative enactments, and all judicial opinions, which did not correspond with their own sense of right.

And inasmuch as it was necessary that the jurors should be drawn by lot, or otherwise taken at random, from the whole body of male adults, without any choice, dictation, or interference, by the government, it was reasonably presumed that substantially all opinions, prevailing among the people, would be represented in the jury; that, in other words, a jury would be, in fact, a fair epitome of "the country," or whole community, which it was designed to represent.

And since the twelve, thus selected, could render no judgment, unless by an unanimous assent, it follows that no laws were intended to be enforced, except such as substantially the whole people were agreed in, as being just.

From this statement, it will be seen that our modern idea, that the majority have the right arbitrarily to govern the minority, and to establish any thing they may please as law, without regard to justice, is wholly incompatible with the principles of the Trial by Jury.

NOTICES.

The following is from the pen of RICHARD HILDRETH, ESQ., the historian.

"ESSAY ON THE TRIAL BY JURY."

MESSRS. EDITORS:—This remarkable book, by Lysander Spooner, will richly repay perusal on the part of all who feel the least interest in the theory of government, that is to say, all the thinking men of the United States, and indeed of all the world over. The charming ease and lucidity of Mr. Spooner's style, — in which, among all the writers of the English language, he has very few competitors, — the close coherence of his ideas, and the sharp dexterity of his logic, give to his book, what we seldom find now-a-days, the interest of a well-compacted drama, with all the Aristotelian unities complete, and a regular beginning, middle, and end. Having begun to read it, we found it impossible to lay it down till we got to the end of it, though obliged to sit up long past midnight, and though we were already informed of the general tenor of the argument, from having seen the greater part of the proof-sheets. The book indeed has this further resemblance to a poem of the first class, that it will not only bear re-perusal, but gain by it — which we take to be the great distinction between the true poem, whether in verse or prose, and the mere novel or romance. There are, however, some citations and notes, which may be skipped on the second

perusal, and indeed on the first, by those inveterately given to that practice, as not essential to the argument, only corroborative of it. But if any reader intends to take issue — as the lawyers say — with Mr. Spooner, he had better read the whole at least twice over.

The trial by jury has enjoyed and enjoys a most lofty traditional reputation as "the palladium of English liberty." Looking at jury trial as it now actually exists, the judges dictating not only the conclusion in law, that is, the decision to which the jury is bound to come upon any such state of facts as they may consider to be proved, but having also the exclusive decision as to what evidence shall be admitted to prove these facts, and the instructing of the jury what weight they ought to allow to this or that piece of evidence, and what conclusions they ought to draw from it; with all these assumptions of authority on the part of the judges, the jury seems to have become very much what the late Mr. Justice Story was accustomed, in private conversation, to describe it as being — a mere stalking-horse, from behind which the judge may shoot quietly and safely, deciding everything, at the same time that he escapes the responsibility, and in some cases, the odium, of doing so.

Such being the practical character of our modern juries, mere cloaks and shields of judicial dictation, it has come, among thinking men, to be a great puzzle how they ever got their immense reputation as a "palladium of liberty;" and some writers have not scrupled to denounce the whole idea as a mere humbug.

Mr. Spooner, however, has shown very conclusively, and by a skilful array of authorities that cannot be got over, that in its original institution, and during the whole time in which it got this reputation as the "palladium of liberty," the jury was a totally different thing from what it has become in these later times under the plastic hands of the judges, the juries having been originally sole judges of both law and fact, indeed possessing substantially a veto on the execution of any such laws as they did not consider conformable to justice and the public good.

All readers may not agree with Mr. Spooner's somewhat enthusiastic admiration of this jury veto power; but that it did exist, and that it was this which made the jury the "palladium of English liberty," he has proved beyond the shadow of a doubt; and in so doing has shed a great deal of new light upon the gradual formation of what is known as the British constitution, the source from which so large a part of our American constitutions are derived.

Nothing is more certain than that the great, indeed the sole value of the trial by jury is political. As a mere contrivance for deciding matters of fact — according to the common representation made of it by modern lawyers — it is clumsy, inconvenient, and liable to a variety of objections. In those countries on the continent of Europe, in which it has been introduced of late years, for the trial of criminal cases, it has greatly disappointed the expectations formed by those who had been accustomed to read of it in books as the "palladium of liberty," and is generally esteemed a total failure.

We are not entirely prepared to go with Mr. Spooner, for the complete re-establishment of the jury veto on the ancient model. But that it is absolutely essential to the liberties of the people to preserve to juries the right of deciding law as well as fact, in all criminal cases, we do not entertain the slightest doubt. And considering the recent and alarming strides, as well of legislative as judicial usurpation, — especially the fact recently announced from the bench of the Federal Court of the United States for this circuit, that ALL the judges of the Supreme Court of the United States scout the idea of any right in a jury to judge of the law in any case whatsoever, — we think Mr. Spooner has done excellent service in calling attention, as he has so ably, to the ancient conservative jury veto.

Mr. Spooner is a thorough-going Democrat, — as zealous for the rights of the people, and as fierce against judicial usurpation, as Jefferson himself. Indeed some of the lunges which he makes at their honors on the bench — as in the note on page 164 — have a hearty frankness about them highly refreshing to one who has been sickened and disgusted — as what hater of falsehood and cant has not been? — by the systematic routine flattery and servility of the bar towards the judges. But more consistent, more comprehensive, and truer to liberty than Jefferson ever was, Mr. Spooner is equally hostile to the usurpations and tyranny of a domineering majority under the forms of legislation. And, indeed, in our

American States, judicial usurpation is seldom very boldly ventured upon, except in the service of a tyrant majority, eager to trample under foot the constitutional and natural rights of the minority. The Conservatives, therefore, no less than the Democrats, owe a debt of gratitude to Mr. Spooner. It is truth and justice in whose cause he is enlisted, not that of party.

R. H.

HON. STEPHEN ROYCE, formerly Chief Justice, and afterwards Governor, of Vermont, says:

EAST BERKSHIRE, VERMONT,
September 21, 1857.

G. W. SEARLE, ESQ.: Sir, — You will please accept my thanks for the favor of Mr. Spooner's book upon "The Trial by Jury." I have derived much pleasure from a hasty perusal of it, and hope the author will persevere and produce the other works, of which he has given indications in this. Although I do not look to see his theories extensively carried out in practice, yet I think his labors must have effect for good. Investigations so decidedly able and searching, can scarcely fail to excite reflection and serious enquiry, — as well with honest legislators and statesmen, as among enlightened jurists. And the result may be, at least, a step taken towards restoring to suitors some of those common-law rights, of which, in the lapse of centuries, they have been gradually deprived.

With high respect, your ob't serv't,

STEPHEN ROYCE.

GEORGE W. SEARLE, ESQ., says: The general proposition assumed and aimed to be sustained is, that "for more than six hundred years — that is, since Magna Carta in 1215 — there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws." It will be seen that this is a bold proposition, and at first glance it may appear untenable; but it is certainly a position not to be entirely appreciated by a glance. It must be confessed that it elevates the tribunal of the Jury to the highest pinnacle of power, making them the judge of the judges, and giving them authority to sit in judgment upon the legislature itself. This position the author seeks to maintain in a very learned and ingenious argument of 224 pages, in the first instance from the general nature of the jury as the palladium of liberty, and a bulwark against the tyranny of authority—by the history, spirit, and language of Magna Carta—and by a variety of reasoning in detail. This head is followed by a general refutation of objections.

It is not our purpose to enter at length upon any discussion, either in support or refutation of the doctrines laid down by the author; for the former task we feel our incompetency, and for the discharge of the latter, that much more time would be requisite than we have at our command, if indeed any time would justify the undertaking. Whatever doubts there may be as to the author's opinions upon many subjects, we may say of his writings what Charles James Fox once said of a speech he was about to reply to in the House of Commons, to one who noticed his serious perturbation, "it is not so easy a matter to answer such an argument as that." * * * That the positions assumed are novel and heretical, judged in the light of prevailing adjudications, is quite true, but that for that reason they are any the less worthy of regard, is quite wide of the truth. To the thinking man we recommend it as food upon which he may feed and grow strong; and to the professional man, in an age of progressive jurisprudence, when the science of law, too long bound with an iron grasp to antiquated decisions and principles having nothing but their antiquity and their folly for their authority, is beginning to take its march by the side of modern science, we recommend its candid and impartial examination, assuring him that in it he will find the bold expression of manly truths, without fear or favor.

WENDELL PHILLIPS, Esq., says of it: "Though I dissent from Mr. Spooner's main conclusion, I must confess this effort is marked with all his pre eminent ingenuity and ability. He has laid all history under contribution for light as to the origin and functions of juries; and I am debtor to his diligence and research for much that was new to me. The original province of a jury has never before been fully investigated in any work accessible and intelligible to common readers. I am not aware that there has been any able and extended argument about it since Erskine's.

The fullness, therefore, of historical illustration, which Mr. Spooner has given to those points, even, on which many of the profession would agree with him, makes the volume a valuable contribution to legal literature.

Though he has not converted me to his views, yet I always read him with pleasure, and admire him for an opponent on one account — he states his questions so fairly, and faces the difficulties like a man.

I quite agree that juries have the right, in both civil and criminal cases, to judge *what the law is*, i. e. what the Legislature have constitutionally enacted — but I cannot allow them the right to set aside statutes because they think them unjust."

ROBERT E. APTHORP, Esq., says of it: If it cannot be answered, it must make a deep impression on the conscience, and thus on the jurisprudence, of the age in which we live. That it *can* be answered I greatly doubt; or rather I should say, I have no doubt about it. One thing is certain, — no *tyro* will venture to flesh his sword upon such a structure of logic and fact; and should any *worthy* antagonist present himself in the lists, our generation and all future ones would owe Mr. Spooner a debt of gratitude for having *forced* attention, in high places, to a subject than which, I may safely say, none more intimately and vitally concerns this Republic.

REV. EDWARD BEECHER, D. D., says of it: Thus stated, it is plain that no point of history can exceed in dignity and importance that which Mr. Spooner has undertaken to discuss.

The mode of his discussion is worthy of the gravity of the point at issue. It does not at all consist of rhetorical declamation, but is a sober, earnest, learned, and powerful argument, based on copious citations from numerous and weighty legal and historical authorities, ancient and modern.

ELIZUR WRIGHT says of it: "To me it seems not only very remarkable as a book, but as a discovery; one which may be more useful to the world than new gold regions."

HON. SAMUEL E. SEWALL says of it: "This is a work of deep research and powerful argument. It ought to be in the hands not merely of every judge and every lawyer, but of every man who values liberty, and wishes to examine its sacred foundations."

HON. JOSHUA R. GIDDINGS says of it: "It should be placed in the library of every lawyer, and of every reader of general literature."

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